UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
CHATTANOOGA DIVISION

UNITED STATES OF AMERICA and STATE OF TENNESSEE Plaintiffs, v. OXY USA INC. Defendant.	Civil Action No. 1:16-cv-103

NOTICE OF LODGING OF PROPOSED CONSENT DECREE

Plaintiff, the United States of America, on behalf of the U.S. Environmental Protection Agency (EPA), hereby lodges with this Court a proposed Consent Decree in partial settlement of the above-captioned action. The United States is concurrently lodging a second proposed Consent Decree in settlement of the remainder of the above-captioned action. This Consent Decree resolves Plaintiffs' claims for the implementation of the remedial action selected by EPA at Operable Unit 3 of the Copper Basin Mining District Superfund Site ("Site"), the recovery of costs incurred by Plaintiffs in connection with the Site, and recovery of costs to be incurred by Plaintiffs in connection with Operable Unit 3 of the Site. No action is required of the Court at this time.

Consistent with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), 28 C.F.R § 50.7, and Paragraph 114 of the proposed Operable Unit 3 Consent Decree, for at least thirty (30) days prior to moving for entry of the proposed Consent Decree, the public will be afforded an opportunity to comment on the proposed settlement. The 30-day period will begin on the date that notice of the lodging of the Consent Decrees is published in the Federal Register. The United States will consider and file with the Court any written comments, views, or allegations submitted to the United States relating to the proposed settlement. The United States may withdraw or withhold its consent to the proposed Consent Decree if the comments, views, or allegations concerning the settlement disclose facts or considerations that indicate that the

proposed Consent Decree is inappropriate, improper, or inadequate. If, after reviewing any public comments, the United States concludes that the Consent Decree should be entered, the United States will seek the entry of the Consent Decree as an order of the Court.

WHEREFORE, the United States respectfully requests that this Court receive the proposed Consent Decree for lodging only, and that it abstain from acting upon the same until the 30-day public comment period has expired and the United States advises the Court whether, after evaluation of any comments received from the public, the United States supports entry of the Consent Decree.

Respectfully submitted this 22nd day of April, 2016.

/s/ Sheila McAnaney

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ATTORNEY FOR PLAINTIFF UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
CHATTANOOGA DIVISION

- x

UNITED STATES OF AMERICA
and STATE OF TENNESSEE

Plaintiffs,

Civil Action No. _____

v.

OXY USA INC.

Defendant

- x

REMEDIAL DESIGN/REMEDIAL ACTION (RD/RA) CONSENT DECREE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of Tennessee, through the Tennessee Department of Environment and Conservation ("State"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607, and T.C.A. § 68-212-201, *et seq*.

B. The United States and the State in their complaint seek, *inter alia*: (1) reimbursement of costs incurred by EPA and the Department of Justice ("DOJ") for response actions at the Copper Basin Mining District Superfund Site in Copperhill, Polk County, Tennessee (the "Site"), together with accrued interest; and (2) performance of response actions by defendant at Operable Unit 3 ("OU 3") of the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Tennessee (the "State") on April 8, 2014, of negotiations with potentially responsible parties ("PRPs") regarding the implementation of remedial design and remedial action for OU 3 at the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. The United States, the State, and Settling Defendant have also entered into a separate consent decree in this matter ("OU 5 Consent Decree") providing for Settling Defendant's performance of response actions for Operable Unit 5 at the Site and Settling Defendant's reimbursement of response costs to be incurred at OU 5 of the Site by the United States and the State after the Effective Date of that Consent Decree. The OU 5 Consent Decree is being lodged concurrently with this Consent Decree.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Forest Service, the United States Fish and Wildlife Service, the Tennessee Valley Authority, and the State of Tennessee on April 8, 2014 of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal and state trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

F. The defendant that has entered into this Consent Decree ("Settling Defendant") does not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaints, nor does it acknowledge that any release or threatened release of hazardous substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

G. Settling Defendant alleges that it has potential claims against Settling Federal Agencies pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") to recover certain costs that Settling Defendant has incurred or will in the future incur to respond to the release or threatened release of hazardous substances at the Site. Settling Federal Agencies do not admit any liability arising out of the transactions or occurrences alleged in any claim or counterclaim asserted by Settling Defendant or any claim by the State

H. In response to a release or a substantial threat of a release of a hazardous substances at or from the Site, EPA commenced on June 28, 2002, a Remedial Investigation and Feasibility Study ("RI/FS") for OU 3 of the Site pursuant to 40 C.F.R. § 300.430.

I. Settling Defendant completed a Remedial Investigation ("RI") Report for OU 3 in April, 2012, and Settling Defendant completed a Feasibility Study ("FS") Report for OU 3 in June, 2012.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on July 9, 2012, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator, EPA Region 4, based the selection of the response action.

K. The decision by EPA on the remedial action to be implemented at OU 3 is embodied in a final Record of Decision ("ROD"), executed on September 26, 2012, on which the State had a reasonable opportunity to review and comment/on which the State has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

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

M. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the ROD and the Work to be performed by Settling Defendant shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

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

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

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1367, and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and the State and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate status of Settling Defendant including, but not limited to, any transfer of assets or real

or personal property, shall in no way alter Settling Defendant's responsibilities under this Consent Decree.

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

IV. DEFINITIONS

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

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

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

"Copper Basin Mining District Site Special Account" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"Copper Basin Reach" shall mean that portion of the Ocoee River in Polk County, Tennessee extending from the town of Copperhill to the slack water of the Ocoee No. 3 Reservoir (River Mile ("RM") 38.0 to RM 33.5).

"Day" or "day" shall mean a calendar day unless expressly stated to be a working day. The term "working day" shall mean a day other than a Saturday, Sunday, or federal or state holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until the close of business of the next working day.

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

"Effective Date" shall mean the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

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

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

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs after the Effective Date in reviewing or developing plans, reports, and other deliverables submitted pursuant to this Consent Decree, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VIII (Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure, implement, monitor, maintain, or enforce Institutional Controls including, but not limited to, the amount of just compensation) and XIV (Emergency Response), Paragraph 41 (Funding for Work Takeover), and Section XXVIII (Community Involvement). Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs Settling Defendant has agreed to pay under this Consent Decree that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from January 11, 2013, to the Effective Date, and Agency for Toxic Substances and Disease Registry ("ATSDR") costs regarding OU 3. Future Response Costs shall not include any amounts paid by Settling Federal Agencies pursuant to Paragraph 48 in reimbursement of Settling Defendant's Response Costs at the Site.

"Institutional Controls" or "ICs" shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, and/or resource use to minimize the potential for human exposure to Waste Material at or in connection with OU 3; (b) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the Remedial Action; and/or (c) provide information intended to modify or guide human behavior at or in connection with OU 3.

"Institutional Control Implementation and Assurance Plan" or "ICIAP" shall mean the plan for implementing, maintaining, monitoring, and reporting on the Institutional Controls required under Section 12 of the ROD, prepared in accordance with the Statement of Work ("SOW").

"Interim Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, (a) paid by the United States in connection with the Site, including OU 3, between January 11, 2013, through the Effective Date, or (b) incurred prior to or on the Effective Date but paid after that date. Interim Response Costs shall not include any amounts paid by Settling Federal Agencies pursuant to Paragraph 48 in reimbursement of Settling Defendant's Response Costs at the Site.

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

"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.

"Ocoee No. 3 Reservoir" shall mean that portion of the Ocoee River in Polk County, Tennessee extending from RM 33.5 to RM 29.2 and including Ocoee Dam No. 3.

"Operable Unit 3" or "OU 3" shall mean that portion of the Site that includes the surface water, sediment, and sediment pore water contained within the bed of Davis Mill Creek ("DMC") from its origin at the Headwaters iron calcine pile downstream to and including Dam No. 5. OU 3 includes portions of the Gypsum Ponds tributary, West Drainage Channel, Belltown Creek channel, and other seepage and discharge areas, as well as the Cantrell Flats water treatment plant, five storm water retention dams along DMC, the Belltown Creek diversion dam, the Belltown and Gypsum Ponds diversion pipelines and their rights of way, and the Dam No. 5 pump station.

"Operable Unit 4" or "OU 4" shall mean that portion of the Site that comprises all upland areas of the watershed to the Site boundary including waste and by-product piles and the Copperhill plant site and the Cantrell Flats plant site, which are separated by Davis Mill Creek.

"Operation and Maintenance" or "O&M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to Section VI (Performance of the Work by Settling Defendant) and the SOW, and maintenance, monitoring, and enforcement of Institutional Controls as provided in the ICIAP.

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

"Parksville Reservoir" shall mean that portion of the Ocoee River in Polk County, Tennessee extending from RM 17.1 to RM 11.9, including Ocoee Dam No. 1.

"Parties" shall mean the United States, including the EPA, the United States Department of Commerce, the United States Department of the Army, and the United States Department of Defense, the State of Tennessee, and Settling Defendant.

"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 January 11, 2013, plus Interest on all such costs that has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section 8.0 of the ROD (including those listed in Tables 8-1, 8-2, 13-1, 13-2, and 13-3) and the SOW and any modified standards established pursuant to this Consent Decree.

"Plaintiffs" shall mean the United States and the State of Tennessee.

"Proprietary Controls" shall mean easements or covenants running with the land that (a) limit land, water, or resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.

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

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to Operable Unit 3 at the Site signed on September 26, 2012, by the Regional Administrator, EPA Region 4, or his/her delegate, and all attachments thereto. The ROD is attached as Appendix A.

"Remedial Action" shall mean all activities Settling Defendant is required to perform under the Consent Decree to implement the ROD, in accordance with the SOW, the final RD/RA

Work Plan, and other plans approved by EPA, including implementation of Institutional Controls, until the Performance Standards are met and maintained, and excluding performance of the activities required under Section XXIV (Retention of Records).

"Remedial Design and Remedial Action Work Plan" or "RD/RA Work Plan" shall mean the document developed pursuant to Paragraph 10 (Remedial Design and Remedial Action) and approved by EPA, and any modifications thereto.

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

"Settling Defendant" shall mean OXY USA Inc., on behalf of itself and its corporate affiliate, Glenn Springs Holdings, Inc., and their successors and assigns.

"Settling Defendant's Response Costs" shall mean all response costs that Settling Defendant has incurred at or in connection with the Site prior to and including the Effective Date, and all future response costs that Settling Defendant may incur after the Effective Date at or in connection with the Site, except for future response costs at or relating to Operable Unit 4.

"Settling Federal Agencies" or "SFAs" shall mean the United States Department of Commerce, the United States Department of the Army, and the United States Department of Defense and their respective predecessor and successor departments, agencies, or instrumentalities.

"Site" shall mean the Copper Basin Mining District Superfund Site (CERCLIS ID TN0001890839), located in southeast Polk County Tennessee, adjacent to the cities of Copper Hill and Ducktown, Polk County, Tennessee, and depicted generally on the map attached as Appendix C. The Site consists of five operable units ("OUs").

"State" shall mean the State of Tennessee and each department, agency, and instrumentality of the State, including TDEC.

"State Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the State incurs after the Effective Date in reviewing or developing plans, reports, and other deliverables submitted pursuant to this Consent Decree, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VIII (Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure, implement, monitor, maintain, or enforce Institutional Controls including, but not limited to, the amount of just compensation), XIV (Emergency Response), Paragraph 41 (Funding for Work Takeover), and Section XXVIII (Community Involvement).

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and O&M for OU 3, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

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

"TDEC" shall mean the Tennessee Department of Environment and Conservation and any successor departments or agencies of the State.

"Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA and the SFAs, except as expressly stated otherwise.

"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) of CERCLA, 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 substance" under Tennessee Code Annotated Section 68-212-202(2).

"Work" shall mean all activities and obligations Settling Defendant is required to perform under this Consent Decree, except the activities required under Section XXIV (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment by the design and implementation of response actions at OU 3 by Settling Defendant, to pay response costs of the Plaintiffs at the Site, and to resolve the claims of Plaintiffs against Settling Defendant at OU 3 and certain claims of the State and Settling Defendant that have been or could have been asserted against the United States with regard to the Site as provided in this Consent Decree.

6. Commitments by Settling Defendant and Settling Federal Agencies.

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

b. Settling Defendant shall pay the United States for Past Response Costs and Future Response Costs and the State for State Future Response Costs as provided in this Consent Decree. Settling Federal Agencies shall pay Settling Defendant for Settling Defendant's Response Costs as provided in this Consent Decree.

7. Compliance With Applicable Law. All activities undertaken by Settling Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendant must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be deemed to be consistent with the NCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Settling Defendant may seek relief under the provisions of Section XVII (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain,

or a delay in obtaining, any permit or approval referenced in Paragraph 8.a and required for the Work, provided that it has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

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

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT

9. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Defendant pursuant to Sections VI (Performance of the Work by Settling Defendant), VII (Quality Assurance, Sampling, and Data Analysis), VIII (Access and Institutional Controls), and XIV (Emergency Response) shall be under the direction and supervision of its Supervising Contractor, the selection of which shall be subject to disapproval by EPA after a reasonable opportunity for review and comment by the State. Within ten days after the lodging of this Consent Decree, Settling Defendant shall notify EPA and the State in writing of the name, title, and qualifications of any contractor proposed to be a Supervising Contractor. With respect to any contractor proposed to be a Supervising Contractor, Settling Defendant shall demonstrate that the proposed contractor has a quality assurance system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed regarding hiring of the proposed contractor. If at any time thereafter, Settling Defendant proposes to change a Supervising Contractor, Settling Defendant shall give such notice to EPA and the State and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the State, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendant in writing. Settling Defendant shall submit to EPA and the State a list of contractors, including the qualifications of each contractor, that would be acceptable to it within 30 days after receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendant may select any contractor from that list that is not disapproved and shall notify EPA and the State of the name of the contractor selected within 21 days after EPA's authorization to proceed.

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

10. Remedial Design and Remedial Action

a. Within 60 days after EPA's issuance to it of an authorization to proceed pursuant to Paragraph 9 (Selection of Supervising Contractor), Settling Defendant shall submit to EPA and the State a work plan for the design and for the performance of the Remedial Action at

OU 3 of the Site ("RD/RA Work Plan"). The RD/RA Work Plan shall provide for construction and implementation of the remedy set forth in the ROD for OU 3, in accordance with the SOW, and achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree, and/or the SOW. Upon its approval by EPA and after a reasonable opportunity for review and comment by the State, the RD/RA Work Plan shall be incorporated into and enforceable under this Consent Decree.

b. The RD/RA Work Plan shall include plans and schedules for the construction and implementation of the remedy set forth in the ROD, this Consent Decree and the SOW including the initial formulation of Settling Defendant's Remedial Action project team (including, but not limited to, the Supervising Contractor); a Health and Safety Plan for field activities required by the RD/RA Work Plan that conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120; and a schedule for sampling, analysis, and submission of data and reports to EPA.

c. Upon approval of the RD/RA Work Plan by EPA, after a reasonable opportunity for review and comment by the State, Settling Defendant shall implement the activities required under the RD/RA Work Plan. Settling Defendant shall submit to EPA and the State all reports and other deliverables required under the approved RD/RA Work Plan in accordance with the approved schedule for review and approval pursuant to Section X (EPA Approval of Plans, Reports, and Other Deliverables). Unless otherwise directed by EPA, Settling Defendant shall not commence physical Remedial Action activities at OU 3 prior to approval of the RD/RA Work Plan.

11. Settling Defendant shall continue to implement the RD/RA Work Plan until the Performance Standards are achieved and can be maintained without further O&M.

12. Modification of SOW or Related Work Plans.

a. If EPA determines that it is necessary to modify the work specified in the SOW and/or in work plans developed pursuant to the SOW to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, and such modification is consistent with the scope of the remedy set forth in the ROD, then EPA may issue such modification in writing and shall notify Settling Defendant of such modification. For the purposes of this Paragraph and Paragraph 43 (Completion of the Work) only, the "scope of the remedy set forth in the ROD" is:

(1) Operation and maintenance of five previously constructed storm water retention dams;

(2) Operation and maintenance of the existing diversion of the West Drainage Channel;

(3) Operation and maintenance of the previously constructed Dam No. 5 and the Dam No. 5 pump station that conveys water from Davis Mill Creek to the Cantrell Flats water treatment plant;

(4) Operation and maintenance of the previously constructed Belltown Creek and Gypsum Ponds clean water diversions;

(5) Operation and maintenance of the existing Cantrell Flats water treatment plant, including necessary refurbishment;

(6) Encapsulation, including operation and maintenance, of discharge from the North Potato Creek diversion tunnel and French drain outlets in high density polyethylene piping from their source to Davis Mill Creek; and covering contaminated sediment that would be exposed by the encapsulation of these surface waters with borrow soil;

(7) Installation, including operation and maintenance, of fencing, netting, or similar materials across the portal of the North Potato Creek diversion tunnel to eliminate direct contact with surface water;

(8) Construction, including operation and maintenance, of a fence along a portion of upper Davis Mill Creek to restrict access and reduce risk by direct contact; and

(9) Implementation of Institutional Controls to restrict access and use of surface water in OU 3.

b. If Settling Defendant objects to the modification, it may, within 30 days after EPA's notification, seek dispute resolution under Paragraph 62 (Record Review).

c. The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if Settling Defendant invokes dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this Consent Decree, and Settling Defendant shall implement all work required by such modification. Settling Defendant shall incorporate any such modification into the RD/RA Work Plan under Paragraph 10 (Remedial Design and Remedial Action), as appropriate.

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

13. Nothing in this Consent Decree, the SOW, or the RD/RA Work Plan constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the SOW and the Work Plan will achieve or maintain the Performance Standards.

14. Off-Site Shipment of Waste Material.

a. Settling Defendant may ship Waste Material from the Site to an off-Site facility only if it verifies, prior to any shipment, that the off-Site facility is operating in compliance with the requirements of Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440, by obtaining a determination from EPA that the proposed receiving facility is operating in compliance with 42 U.S.C. § 9621(d)(3) and 40 C.F.R. § 300.440.

b. Settling Defendant may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator. This notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice shall include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Settling Defendant also shall notify the state environmental official referenced above and the EPA Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state

facility. Settling Defendant shall provide the written notice after the award of the contract for Remedial Action construction and before the Waste Material is shipped.

VII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

15. Quality Assurance.

a. Settling Defendant shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendant of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

b. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendant 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 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 Consent Decree. Settling Defendant shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendant in implementing this Consent Decree. In addition, Settling Defendant shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendant shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Consent Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods that are documented in the "USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM05.4," and the "USEPA Contract Laboratory Program Statement of Work for Organic Analysis, SOM01.2," and any amendments made thereto during the course of the implementation of this Consent Decree; however, upon approval by EPA, after opportunity for review and comment by the State, Settling Defendant may use other analytical methods that are as stringent as or more stringent than the CLP-approved methods. Settling Defendant shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent quality assurance/quality control ("QA/QC") program. Settling Defendant shall use only laboratories that have a documented Quality System that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements. Settling Defendant shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Consent Decree are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

16. Upon request, Settling Defendant shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives. Settling Defendant shall notify EPA and the State not less than 28 days in advance of any sample collection activity unless

shorter notice is agreed to by EPA. In addition, EPA and the State shall have the right to take any additional samples that EPA or the State deems necessary. Upon request, EPA and the State shall allow Settling Defendant to take split or duplicate samples of any samples they take as part of Plaintiffs' oversight of Settling Defendant's implementation of the Work.

17. Settling Defendant shall submit to EPA and the State two copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendant with respect to OU 3 of the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

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

VIII. ACCESS AND INSTITUTIONAL CONTROLS

19. If real property within or adjacent to OU 3, or any other real property where access or land/water use restrictions are needed, is owned or controlled by Settling Defendant:

a. Settling Defendant shall, commencing on the date of lodging of the Consent Decree, provide the United States, including EPA, and the State, and their representatives, contractors, and subcontractors, with access at all reasonable times to such real property, to conduct any activity regarding the Consent Decree including, but not limited to, the following activities:

(1) Monitoring the Work;

(2) Verifying any data or information submitted to the United States or the State;

(3) Conducting investigations regarding contamination at or near OU 3;

(4) Obtaining samples;

(5) Assessing the need for, planning, or implementing additional response actions at or near the Site;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved CQAP;

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 81 (Work Takeover);

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section XXIII (Access to Information);

(9) Assessing Settling Defendant's compliance with the Consent Decree;

(10) Determining whether OU 3 of the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Decree: and

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls.

b. Commencing on the date of lodging of the Consent Decree, Settling Defendant shall not use OU 3 of the Site, or such other real property subject to this Paragraph 19, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action. The restrictions shall include, but not be limited to those listed in this subparagraph.

Except for activities authorized under the O&M Plan or ICIAP, or unless otherwise expressly approved by EPA and TDEC, Settling Defendant shall not: remove, excavate, dig, grade, dredge, or release sediment, soil, sand, gravel, minerals, organic matter, or materials of any kind from the streambed of Davis Mill Creek from its origin at the Headwaters iron calcine pile downstream to and including dam No. 5, including the ponds between dams No. 1, 2, 3, 4, and 5; or come into contact with or otherwise use surface water contained in the streambed of Davis Mill Creek from its origin at the Headwaters iron calcine pile downstream to and including dam No. 5.

c. For real property subject to this Paragraph 19, Settling Defendant shall also:

(1) Execute and record in the appropriate land records office Proprietary Controls that: (i) grant a right of access to conduct any activity regarding the Consent Decree including, but not limited to, those activities listed in Paragraph 19.a; and (ii) grant the right to enforce the land/water use restrictions set forth in Paragraph 19.b, including, but not limited to, the specific restrictions listed therein, as further specified in this Paragraph 19.c.

(2) The Proprietary Controls shall be granted to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives; (ii) the State and its representatives; (iii) Settling Defendant and its representatives; and/or (iv) other appropriate grantees. The Proprietary Controls, other than those granted to the United States, shall include a designation that EPA (and/or the State as appropriate) is a third-party beneficiary, allowing EPA to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property. If any Proprietary Controls are granted to Settling Defendant pursuant to this Paragraph 19.c(2), then Settling Defendant shall monitor, maintain, report on, and enforce such Proprietary Controls.

(3) Within 30 days after written request by EPA, submit to EPA for review and approval regarding such real property: (i) draft Proprietary Controls, in substantially the form attached hereto as Appendix D, that are enforceable under state law; and (ii) a current title insurance commitment or other evidence of title acceptable to EPA, that shows title to the land affected by the Proprietary Controls to be free and clear of all prior liens and encumbrances (except when EPA waives the release or subordination of such prior liens or encumbrances or when, despite best efforts, Settling Defendant is unable to obtain release or subordination of such prior liens or encumbrances).

(4) Within 15 days of EPA's approval and acceptance of the Proprietary Controls and the title evidence, update the title search and, if it is determined that nothing has occurred since the effective date of the commitment, or other title

evidence, to affect the title adversely, record the Proprietary Controls with the appropriate land records office. Within 30 days after recording the Proprietary Controls, Settling Defendant shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Proprietary Controls showing the clerk's recording stamps. If the Proprietary Controls are to be conveyed to the United States, the Proprietary Controls and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title shall be obtained as required by 40 U.S.C. § 3111.

d. Transfers of Real Property.

(1) Settling Defendant shall, at least 60 days prior to any Transfer by it of any real property subject to this Paragraph 19, give written notice: (1) to the transferee regarding the Consent Decree and any Institutional Controls regarding the real property; and (2) to EPA and the State regarding the proposed Transfer, including the name and address of the transferee and the date on which the transferee was notified of the Consent Decree and any Institutional Controls.

(2) Settling Defendant may Transfer any real property subject to this Paragraph 19 only if: (1) any Proprietary Controls required by this Paragraph have been recorded with respect to the real property; or (2) Settling Defendant has obtained an agreement from the transferee, enforceable by Settling Defendant and the United States, to (i) allow access and restrict land/water use, pursuant to this Paragraph, (ii) record any Proprietary Controls on the real property, pursuant to this Paragraph, and (iii) subordinate its rights to any such Proprietary Controls, pursuant to this Paragraph, and EPA has approved the agreement in writing. If, after a Transfer of the real property, the transferee fails to comply with the agreement provided for in this Paragraph 19.d, Settling Defendant shall take all reasonable steps to obtain the transferee's compliance with such agreement. The United States may seek the transferee's compliance with the agreement and/or assist Settling Defendant in obtaining compliance with the agreement. Settling Defendant shall reimburse the United States under Section XV (Payments for Response Costs), for all costs incurred, direct or indirect, by the United States regarding obtaining compliance with such agreement, including, but not limited to, the cost of attorney time.

(3) In the event of any Transfer by Settling Defendant of real property subject to this Paragraph 19, unless the United States otherwise consents in writing, Settling Defendant shall continue to comply with its obligations under the Consent Decree, including, but not limited to, its obligation to provide and/or secure access, to implement, maintain, monitor, and report on Institutional Controls, and to abide by such Institutional Controls.

20. If real property within or adjacent to OU 3 of the Site, or any other real property where access and/or land/water use restrictions are needed to implement the SOW or ROD, is owned or controlled by persons other than Settling Defendant, the United States, or the State, Settling Defendant shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for the United States, the State, Settling Defendant, and their representatives, contractors, and subcontractors, to conduct any

activity regarding the Consent Decree including, but not limited to, the activities listed in Paragraph 19.a;

b. an agreement, enforceable by Settling Defendant and the United States, to refrain from using OU 3 of the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action. The agreement shall include, but not be limited to, the land/water use restrictions listed in Paragraph 19.b.

c. the execution and recordation in the appropriate land records office of Proprietary Controls that (i) grant a right of access to conduct any activity regarding the Consent Decree including, but not limited to, those activities listed in Paragraph 19.a, and (ii) grant the right to enforce the land/water use restrictions set forth in Paragraph 19.b, including, but not limited to, the specific restrictions listed therein and any land/water use restrictions listed in the ICIAP. The Proprietary Controls shall be granted to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) Settling Defendant and its representatives, and/or (iv) other appropriate grantees. The Proprietary Controls, other than those granted to the United States, shall include a designation that EPA (and/or the State as appropriate) is a third party beneficiary, allowing EPA to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property. If any Proprietary Controls are granted to Settling Defendant pursuant to this Paragraph 20.c, then Settling Defendant shall monitor, maintain, report on, and enforce such Proprietary Controls.

21. For purposes of Paragraphs 19.c.(3) and 20, "best efforts" includes the payment of reasonable sums of money to obtain access, an agreement to restrict land/water use, Proprietary Controls, and/or an agreement to release or subordinate a prior lien or encumbrance. If, within 45 days after EPA's request for Proprietary Controls, Settling Defendant has not: (a) obtained agreements to provide access, restrict land/water use, or record Proprietary Controls, as required by Paragraph 20.a or 20.b; or (b) obtained, pursuant to Paragraph 19.c.(3), agreements from the holders of prior liens or encumbrances to release or subordinate such liens or encumbrances to the Proprietary Controls, Settling Defendant shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendant has taken to attempt to comply with Paragraph 19 or 20. The United States may, as it deems appropriate, assist Settling Defendant in obtaining access, agreements to restrict land/water use, Proprietary Controls, or the release or subordination of a prior lien or encumbrance. Settling Defendant shall reimburse the United States under Section XV (Payments for Response Costs) for all costs incurred, direct or indirect, by the United States in obtaining such access, agreements to restrict land/water use, Proprietary Controls, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

22. If EPA determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls are needed at or in connection with the Site, Settling Defendant shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such governmental controls.

23. Notwithstanding any provision of the Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require

Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

IX. REPORTING REQUIREMENTS

24. In addition to any other requirement of this Consent Decree, Settling Defendant shall submit to EPA and the State two copies of written monthly progress reports that: (a) describe the actions that have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendant or its contractors or agents in the previous month; (c) identify all plans, reports, and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next six weeks 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 Settling Defendant has proposed to EPA or that have been approved by EPA; and (g) describe, if requested by EPA, all activities undertaken in support of the Community Involvement Plan during the previous month and those to be undertaken in the next six weeks. Settling Defendant shall submit these progress reports to EPA and the State by the tenth day of every month following the lodging of this Consent Decree until EPA notifies Settling Defendant pursuant to Paragraph 43.b of Section XIII (Certification of Completion). If requested by EPA or the State, Settling Defendant shall also provide briefings for EPA and the State to discuss the progress of the Work.

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

26. Upon the occurrence of any event during performance of the Work that Settling Defendant is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), 42 U.S.C. § 11004, Settling Defendant shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator nor 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.

27. Within 20 days after the onset of such an event, Settling Defendant shall furnish to EPA and the State a written report, signed by Settling Defendant's Project Coordinator, setting forth the events that occurred and the measures taken, and to be taken, in response thereto. Within 30 days after the conclusion of such an event, Settling Defendant shall submit a report setting forth all actions taken in response thereto.

28. Settling Defendant shall submit two copies of all plans, reports, data, and other deliverables required by the SOW, the RD/RA Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendant shall simultaneously submit two copies of all such plans, reports, data, and other deliverables to the State. Upon request by EPA, Settling Defendant shall submit in electronic form all or any portion of any deliverables they are required to submit pursuant to the provisions of this Consent Decree.

29. All deliverables submitted by Settling Defendant to EPA that purport to document Settling Defendant's compliance with the terms of this Consent Decree shall be signed by an authorized representative of Settling Defendant.

X. EPA APPROVAL OF PLANS, REPORTS, AND OTHER DELIVERABLES

30. Initial Submissions.

a. After review of any plan, report, or other deliverable that is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall, in a written notice to Settling Defendant: (1) approve, in whole or in part, the submission; (2) approve the submission upon specified conditions; (3) disapprove, in whole or in part, the submission; or (4) any combination of the foregoing.

b. EPA also may modify the initial submission to cure deficiencies in the submission if: (1) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (2) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable plan, report, or deliverable.

31. Resubmissions. Upon receipt of a notice of disapproval under Paragraph 30.a(3) or (4), or if required by a notice of approval upon specified conditions under Paragraph 30.a(2), Settling Defendant shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. After review of the resubmitted plan, report, or other deliverable, EPA shall, in a written notice to Settling Defendant: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring Settling Defendant to correct the deficiencies; or (e) any combination of the foregoing.

32. Material Defects. If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by EPA under Paragraph 30.b(2) or 31 due to such material defect, then the material defect shall constitute a lack of compliance for purposes of Paragraph 65. The provisions of Section XVIII (Dispute Resolution) and Section XIX (Stipulated Penalties) shall govern the accrual and payment of any stipulated penalties regarding Settling Defendant's submissions under this Section.

33. Implementation. Upon approval, approval upon conditions, or modification by EPA under Paragraph 30 (Initial Submissions) or Paragraph 31 (Resubmissions), of any plan, report, or other deliverable, or any portion thereof: (a) such plan, report, or other deliverable, or portion thereof, shall become incorporated into and enforceable under this Consent Decree; and (b) Settling Defendant shall take any action required by such plan, report, or other deliverable, or

portion thereof, subject only to their right to invoke the Dispute Resolution procedures set forth in Section XVIII (Dispute Resolution) with respect to the modifications or conditions made by EPA. The implementation of any non-deficient portion of a plan, report, or other deliverable submitted or resubmitted under Paragraph 30 or 31 shall not relieve Settling Defendant of any liability for stipulated penalties under Section XIX (Stipulated Penalties).

XI. PROJECT COORDINATORS

34. Within 20 days after lodging this Consent Decree, Settling Defendant, the State and EPA will notify each other, in writing, of the name, address, telephone number, and email address 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 five working days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. Settling Defendant's Project Coordinators shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Settling Defendant's Project Coordinators shall not be attorneys for any Settling Defendant in this matter. Project Coordinators may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

35. Plaintiffs may designate other representatives, including, but not limited to, EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the NCP, 40 C.F.R. Part 300. EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the NCP, to halt any Work required by this Consent Decree and to take any necessary response action when he or 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.

36. EPA's Project Coordinator, the State's Project Coordinator, and Settling Defendant's Project Coordinators will meet on an annual basis unless emergent conditions require more frequent meetings.

XII. PERFORMANCE GUARANTEE

37. In order to ensure completion of the Work, Settling Defendant shall establish and maintain a performance guarantee, which must be satisfactory in form and substance to EPA, for the benefit of EPA in the amount of $32,500,000, (hereinafter "Estimated Cost of the Work") in one or more of the following forms:

a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (1) that has the authority to issue letters of credit and (2) whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (1) that has the authority to act as a trustee and (2) whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier (i) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (ii) whose insurance operations are regulated and examined by a federal or state agency;

e. A demonstration by Settling Defendant that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the remaining amount of the Estimated Cost of the Work (plus the amount(s) of any other environmental obligations under federal or state law financially assured through the use of a financial test or guarantee), provided that all other requirements of 40 C.F.R. § 264.143(f) are met to EPA's satisfaction; or

f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (1) a direct or indirect parent company of Settling Defendant, or (2) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with Settling Defendant; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test and reporting requirements for owners and operators set forth in subparagraphs (1) through (8) of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work (plus the amount(s) of any other environmental obligations under federal, state, or tribal law financially assured through the use of a financial test or guarantee) that it proposes to guarantee hereunder.

38. Settling Defendant has selected, and EPA has found satisfactory, as an initial performance guarantee, a written corporate guarantee specified under Paragraph 37.f, in the form attached hereto as Appendix E. Within 30 Days after the Effective Date, Settling Defendant shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the form of financial assurance attached as Appendix E and shall submit such mechanisms and documents to the EPA Regional Financial Management Officer in accordance with Section XXV (Notices and Submissions), with a copy to Financial Assurance Specialist, Region 4, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303-8960, and to the United States, EPA and the State as specified in Section XXV (Notices and Submissions).

39. If, at any time after the Effective Date and before issuance of the Certification of Completion of the Work pursuant to Paragraph 43.b, Settling Defendant provides a performance guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 37.e or 37.f, Settling Defendant shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f) relating to these mechanisms unless otherwise provided in this Consent Decree, including but not limited to: (a) the initial submission of required financial reports and statements from the relevant entity's chief financial officer ("CFO") and independent certified public accountant ("CPA"), in the form prescribed by EPA in its financial test sample CFO letters and CPA reports available at: http://cfpub.epa.gov/compliance/models/view.cfm?model_ID=573; (b) the annual resubmission of such reports and statements within 90 days after the close of each such entity's fiscal year; and (c) the prompt notification of EPA after each such entity determines that it no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1) and in any event within 90 days after the close of any fiscal year in which such entity no longer satisfies such financial test requirements. For purposes of the performance guarantee mechanisms specified in this

Section XII, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to include the Work; the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to include the Estimated Cost of the Work; the terms "owner" and "operator" shall be deemed to refer to Settling Defendant making a demonstration under Paragraph 37.e or 37.f; and the terms "facility" and "hazardous waste facility" shall be deemed to include OU 3 and the Site.

40. In the event that EPA determines at any time that a performance guarantee provided by Settling Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that Settling Defendant becomes aware of information indicating that a performance guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Settling Defendant, within 30 days after receipt of notice of EPA's determination or, as the case may be, within 30 days after Settling Defendant becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of performance guarantee listed in Paragraph 37 that satisfies all requirements set forth in this Section XII; provided, however, that if Settling Defendant cannot obtain such revised or alternative form of performance guarantee within such 30-day period, and provided further that Settling Defendant shall have commenced to obtain such revised or alternative form of performance guarantee within such 30-day period, and thereafter diligently proceeds to obtain the same, EPA shall extend such period for such time as is reasonably necessary for Settling Defendant in the exercise of due diligence to obtain such revised or alternative form of performance guarantee, such additional period not to exceed 60 days. On day 30, Settling Defendant shall provide to EPA a status report on its efforts to obtain the revised or alternative form of guarantee. In seeking approval for a revised or alternative form of performance guarantee, Settling Defendant shall follow the procedures set forth in Paragraph 42.b(2). Settling Defendant's inability to post a performance guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Settling Defendant to complete the Work in strict accordance with the terms of this Consent Decree.

41. Funding for Work Takeover. The commencement of any Work Takeover pursuant to Paragraph 81 shall trigger EPA's right to receive the benefit of any performance guarantee(s) provided pursuant to Paragraph 37, and at such time EPA shall have immediate access to resources guaranteed under any such performance guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. Upon the commencement of any Work Takeover, if (a) for any reason EPA is unable to promptly secure the resources guaranteed under any such performance guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or (b) in the event that the performance guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 37.e or Paragraph 37.f, Settling Defendant (or in the case of Paragraph 37.f, the guarantor) shall immediately upon written demand from EPA deposit into a special account within the EPA Hazardous Substance Superfund or such other account as EPA may specify, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of completing the Work as of such date, as determined by EPA. In addition, if at any time EPA is notified by the issuer of a

performance guarantee that such issuer intends to cancel the performance guarantee mechanism it has issued, then, unless Settling Defendant provides a substitute performance guarantee mechanism in accordance with this Section XII no later than 30 days prior to the impending cancellation date, EPA shall be entitled (as of and after the date that is 30 days prior to the impending cancellation) to draw fully on the funds guaranteed under the then-existing performance guarantee. All EPA Work Takeover costs not reimbursed under this Paragraph shall be reimbursed under Section XV (Payments for Response Costs).

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

a. Reduction of Amount of Performance Guarantee. If Settling Defendant believes that the estimated cost of completing the Work has diminished below the amount set forth in Paragraph 37, Settling Defendant may, on any anniversary of the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the performance guarantee provided pursuant to this Section so that the amount of the performance guarantee is equal to the estimated cost of completing the Work. Settling Defendant shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the estimated cost of completing the Work and the basis upon which such cost was calculated. In seeking approval for a reduction in the amount of the performance guarantee, Settling Defendant shall follow the procedures set forth in Paragraph 42.b(2) for requesting a revised or alternative form of performance guarantee, except as specifically provided in this Paragraph 42.a. If EPA decides to accept Settling Defendant's proposal for a reduction in the amount of the performance guarantee, either to the amount set forth in Settling Defendant's written proposal or to some other amount as selected by EPA, EPA will notify the petitioning Settling Defendant of such decision in writing. Upon EPA's acceptance of a reduction in the amount of the performance guarantee, the Estimated Cost of the Work shall be deemed to be the estimated cost of completing the Work set forth in EPA's written decision. After receiving EPA's written decision, Settling Defendant may reduce the amount of the performance guarantee in accordance with and to the extent permitted by such written acceptance and shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding in accordance with Paragraph 42.b(2). In the event of a dispute, Settling Defendant may reduce the amount of the performance guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XVIII (Dispute Resolution). No change to the form or terms of any performance guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 39 or 42.b.

b. Change of Form of Performance Guarantee.

(1) If, after the Effective Date, Settling Defendant desires to change the form or terms of any performance guarantee(s) provided pursuant to this Section, Settling Defendant may, on any anniversary of the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form or terms of the performance guarantee provided hereunder. The submission of such proposed revised or alternative performance guarantee shall be as provided in Paragraph 42.b(2). Any decision made by EPA on a petition submitted under this Paragraph shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Settling Defendant pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

(2) Settling Defendant shall submit a written proposal for a revised or alternative performance guarantee to EPA that shall specify, at a minimum, the estimated cost of completing the Work, the basis upon which such cost was calculated, and the proposed revised performance guarantee, including all proposed instruments or other documents required in order to make the proposed performance guarantee legally binding. The proposed revised or alternative performance guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Settling Defendant shall submit such proposed revised or alternative performance guarantee to the EPA Regional Financial Management Officer in accordance with Section XXV (Notices and Submissions), with a copy to Financial Assurance Specialist, Region 4, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303-8960. EPA will notify Settling Defendant in writing of its decision to accept or reject a revised or alternative performance guarantee submitted pursuant to this Paragraph. Within sixty (60) days after receiving a written decision approving the proposed revised or alternative performance guarantee, Settling Defendant shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected performance guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such performance guarantee(s) shall thereupon be fully effective. Settling Defendant shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding to the EPA Regional Financial Management Officer within twenty (20) days after executing and/or finalizing such documents, in accordance with Section XXV (Notices and Submissions), with a copy to Financial Assurance Specialist, Region 4, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303-8960 and to the United States and EPA and the State as specified in Section XXV.

c. Release of Performance Guarantee. Settling Defendant shall not release, cancel, or discontinue any performance guarantee provided pursuant to this Section except as provided in this Paragraph. If Settling Defendant receives written notice from EPA in accordance with Paragraph 43 that the Work has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies Settling Defendant in writing, Settling Defendant may thereafter release, cancel, or discontinue the performance guarantee(s) provided pursuant to this Section. In the event of a dispute, Settling Defendant may release, cancel, or discontinue the performance guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XVIII (Dispute Resolution).

XIII. CERTIFICATION OF COMPLETION

43. Completion of the Work.

a. Within 90 days after Settling Defendant concludes that all phases of the Work have been fully performed, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant, EPA, and the State. If, after the pre-certification inspection, Settling Defendant still believes that the Work has been fully performed, Settling Defendant shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree and conforming to the specifications in the SOW for the Remedial Action Report. The report shall contain the following statement, signed by a responsible corporate official of Settling Defendant or Settling Defendant's Project Coordinator:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendant in writing of the activities that must be undertaken by Settling Defendant pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy set forth in the ROD," as that term is defined in Paragraph 12. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require Settling Defendant to submit a schedule to EPA for approval pursuant to Section X (EPA Approval of Plans, Reports, and Other Deliverables). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XVIII (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion of the Work by Settling Defendant and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Consent Decree, EPA will so notify Settling Defendant in writing within 60 days of any such comment received from the State, or 180 days of the initial request by Settling Defendant under Paragraph 43.a.

XIV. EMERGENCY RESPONSE

44. If any action or occurrence during the performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendant shall, subject to Paragraph 45, 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 EPA's Project Coordinator is unavailable, EPA's Alternate Project Coordinator) and the State's Project Coordinator. If neither of these persons is available, Settling Defendant shall notify the EPA Emergency Response Unit, Region 4. Settling Defendant shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendant fails to take appropriate response action as required by this Section, and EPA or, as appropriate, the State takes such action instead, Settling Defendant shall reimburse EPA and the State all costs of the response action under Section XV (Payments for Response Costs).

45. Subject to Section XX (Covenants by Plaintiffs), nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States, or the State, (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.

XV. PAYMENTS FOR RESPONSE COSTS

46. Payment by Settling Defendant for Past Response Costs.

a. Within 75 days after the Effective Date, Settling Defendant shall pay to EPA $10,770,509.33 in payment for Past Response Costs. Payment shall be made in accordance with Paragraphs 49.a (Instructions for Past Response Costs Payments).

b. Of the amount to be paid by Settling Defendant pursuant to Paragraph 46.a, 75% ($8,077,882) shall be deposited by EPA in the EPA Hazardous Substance Superfund and 25% ($2,692,627.33) shall be deposited by EPA in the Copper Basin Mining District Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

47. Payments by Settling Defendant for Future Response Costs. Settling Defendant shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. On a periodic basis, EPA will send Settling Defendant a bill requiring payment that includes a SCORPIOS Report and a DOJ case cost summary, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and DOJ. Settling Defendant shall make all payments within 30 days after Settling Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 50, in accordance with Paragraphs 49.b and 49.c (Payment Instructions for Settling Defendant).

b. The total amount to be paid by Settling Defendant pursuant to Paragraph 47.b shall be deposited by EPA to the EPA Hazardous Substance Superfund.

c. Payments by Settling Defendant to State. Settling Defendant shall pay to the State all State Future Response Costs not inconsistent with the NCP. The State will send Settling Defendant a bill requiring payment on a periodic basis. Settling Defendant shall make all payments within 60 days after Settling Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 50.

48. Payment by Settling Federal Agencies.

a. Within 60 days after the Effective Date, the United States, on behalf of Settling Federal Agencies, shall pay to Settling Defendant $12,633,664.00. The payment shall be made by Automated Clearing House Electronic Funds Transfer as follows:

Bank of America
ABA = 026009593
Account = 0180268367
SWIFT Address = BOFAUS65
1950 N. Stemmons, Suite 5010
Dallas, TX 75207

When the United States, on behalf of Settling Federal Agencies, has been notified that the

Department of Treasury has made the payment to Settling Defendant, the United States, on behalf of Settling Federal Agencies, will send Settling Defendant a notice in accordance with Section XXV.

b. If the full balance of such payment is not made within 60 days after the Effective Date, then the United States, on behalf of Settling Federal Agencies, shall pay interest on the unpaid balance commencing on the 61st day after the Effective Date. Interest shall accrue at the rate specified for interest on investments of the Hazardous Substance Superfund, 26 U.S.C. § 9507(d)(3)(c).

c. The Parties recognize and acknowledge that the payment obligations of the United States under this Paragraph 48 can only be paid from appropriated funds legally available for such purpose. Nothing in this Paragraph shall be interpreted or construed as a commitment or requirement that the United States or any Federal agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

49. Payment Instructions for Settling Defendant.

a. Instructions for Past Response Costs Payments.

The Financial Litigation Unit (FLU) of the United States Attorney's Office for the District of Eastern Tennessee shall provide Settling Defendant, in accordance with Paragraph 105, with instructions regarding making payments to DOJ on behalf of EPA. The instructions must include a Consolidated Debt Collection System (CDCS) number to identify payments made under this CD. When making payments under this Paragraph 49.a, Settling Defendant shall also comply with Paragraph 49.c.

b. Instructions for Future Response Costs Payments and Stipulated Penalties. For all payments subject to this Paragraph 49.b, Settling Defendant shall make such payment by Fedwire EFT, referencing the Site ID and DOJ numbers. The Fedwire EFT payment must be sent as follows:

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

When making payments under this Paragraph 49.b, Settling Defendant shall also comply with Paragraph 49.c.

c. Instructions for All Payments to the United States. All payments made under Paragraphs 49.a (Instructions for Past Response Cost Payments) or 49.b (Instructions for Future Response Costs Payments and Stipulated Penalties) shall reference the CDCS Number, Site/Spill ID Number A485, and DOJ Case Number 90-11-3-10404/1. At the time of any payment required to be made in accordance with Paragraphs 49.a or 49.b, Settling Defendant shall send notice that payment has been made to the United States, and to EPA, in accordance with Section XXV (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail at 26 Martin Luther King Drive, Cincinnati,

Ohio 45268. Such notice shall also reference the CDCS Number, Site/Spill ID Number, and DOJ Case Number.

d. Instructions for Payments to the State. Payments to the State shall be by check made payable to "The State of Tennessee," and should include the Site number on the check.

Payments to the State shall be mailed to:

Attn: Andy Binford
Tennessee Department of Environment and Conservation
Division of Remediation
William R. Snodgrass TN Tower
312 Rosa L. Parks Avenue
14th Floor
Nashville, TN 37243

50. Settling Defendant may contest any Future Response Costs billed under Paragraph 47 (Payments by Settling Defendant for Future Response Costs) if it determines that EPA or the State has made a mathematical or accounting error or included a cost item that is not within the definition of Future Response Costs or State Future Response Costs, respectively, or if it believes EPA or the State incurred excess costs as a direct result of an EPA or State action or omission that was inconsistent with a specific provision or provisions of the NCP. Such objection shall be made in writing within 30 days after receipt of the bill and must be sent to the United States (if EPA's accounting is being disputed) or the State (if the State's accounting is being disputed) pursuant to Section XXV (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs or State Future Response Costs and the basis for objection. In the event of an objection, Settling Defendant shall pay all uncontested Future Response Costs and State Future Response Costs to the United States or the State, as applicable, within 30 days after Settling Defendant's receipt of the bill requiring payment. Simultaneously, Settling Defendant shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC"), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs or State Future Response Costs. Settling Defendant shall send to the United States, as provided in Section XXV (Notices and Submissions), and the State a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Settling Defendant shall initiate the Dispute Resolution procedures in Section XVIII (Dispute Resolution). If the United States or the State prevails in the dispute, Settling Defendant shall pay the sums due (with accrued interest) to the United States or the State, if State costs are disputed, within five days after the resolution of the dispute. If Settling Defendant prevails concerning any aspect of the contested costs, Settling Defendant shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the United States or the State, if State costs are disputed, within five days after the resolution of the dispute. Settling Defendant shall be disbursed any balance of the escrow account. All payments to the United States for Future Response Costs under this Paragraph shall be made in accordance with Paragraph 49.b (Payment Instructions for Settling Defendant). The dispute resolution procedures set forth in this Paragraph in conjunction

with the procedures set forth in Section XVIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Defendant's obligation to reimburse the United States and the State for Future Response Costs and State Future Response Costs, respectively.

51. Interest. In the event that any payment for Past Response Costs, Future Response Costs, or State Future Response Costs required under this Section is not made by the date required, Settling Defendant shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs under this Paragraph shall begin to accrue on the Effective Date. The Interest on Future Response Costs and State Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendant's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 66.

XVI. INDEMNIFICATION AND INSURANCE

52. Settling Defendant's Indemnification of the United States and the State.

a. The United States and the State do not assume any liability by entering into this Consent Decree or by virtue of any designation of Settling Defendant as EPA's authorized representative under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Settling Defendant shall indemnify, save and hold harmless the United States, the State, and their officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Settling Defendant's behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendant as EPA's authorized representative under Section 104(e) of CERCLA. Further, Settling Defendant agrees to pay the United States and the State all costs they incur including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Settling Defendant's behalf or under its control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Settling Defendant in carrying out activities pursuant to this Consent Decree. Neither Settling Defendant nor any such contractor shall be considered an agent of the United States or the State.

b. The United States or the State, respectively, shall give Settling Defendant notice of any claim for which the United States or the State plans to seek indemnification pursuant to this Paragraph 52, and shall consult with Settling Defendant prior to settling such claim.

53. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work on or relating to the Site, including, but not limited to, claims on

account of construction delays. In addition, Settling Defendant shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work on or relating to OU 3 of the Site, including, but not limited to, claims on account of construction delays.

54. No later than 15 days before commencing any on-site Work, Settling Defendant shall secure, and shall maintain until the first anniversary after the Remedial Action has been performed in accordance with this Consent Decree and the Performance Standards have been achieved, commercial general liability insurance with limits of one million dollars, for any one occurrence, and automobile liability insurance with limits of one million dollars, combined single limit, naming the United States and the State as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Settling Defendant pursuant to this Consent Decree. In addition, for the duration of this Consent Decree, Settling Defendant 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 Settling Defendant in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendant shall provide to EPA and the State certificates of such insurance and a copy of each insurance policy. Settling Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendant demonstrates by evidence satisfactory to EPA and the State that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendant need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XVII. FORCE MAJEURE

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

56. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree for which Settling Defendant intends or may intend to assert a claim of force majeure, that Settling Defendant shall notify EPA's Project Coordinator orally 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 Division, EPA Region 4, within 7 days of when Settling Defendant first knew that the event might cause a delay. Within 7 days thereafter, Settling Defendant shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Defendant's rationale for attributing such delay to a force majeure; and a statement as to

whether, in the opinion of Settling Defendant, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Settling Defendant shall be deemed to know of any circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Settling Defendant from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 55 and whether Settling Defendant has exercised its best efforts under Paragraph 55, EPA may, in its unreviewable discretion, excuse in writing Settling Defendant's failure to submit timely notices under this Paragraph.

57. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by EPA, after a reasonable opportunity for review and comment by the State, 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 shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Settling Defendant in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay is attributable to a force majeure, EPA will notify Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

58. If Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XVIII (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 55 and 56. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XVIII. DISPUTE RESOLUTION

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

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

61. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States and the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Settling Defendant. The Statement of Position shall specify Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 62 (Record Review) or Paragraph 63.

b. Within 10 days after receipt of Settling Defendant's Statement of Position, EPA will serve on Settling Defendant 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 62 (Record Review) or Paragraph 63. Within 10 days after receipt of EPA's Statement of Position, Settling Defendant may submit a Reply.

c. If there is disagreement between EPA and Settling Defendant as to whether dispute resolution should proceed under Paragraph 62 (Record Review) or Paragraph 63, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if Settling Defendant 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 62 and 63.

62. Record Review. 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, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree, and the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendant regarding the validity of the ROD's provisions.

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

b. The Director of the Superfund Division, EPA Region 4, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 62.a. This decision shall be binding upon Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraphs 62.c and 62.d.

c. Any administrative decision made by EPA pursuant to Paragraph 62.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendant with the Court and served on all Parties within twenty (20) days after receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within

which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendant's motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Superfund 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 62.a.

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

a. Following receipt of Settling Defendant's Statement of Position submitted pursuant to Paragraph 61, the Director of the Superfund Division, EPA Region 4, will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on Settling Defendant unless, within fifteen (15) days after receipt of the decision, Settling Defendant 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 Consent Decree. The United States may file a response to Settling Defendant's motion.

b. Notwithstanding Paragraph M (CERCLA Section 113(j) Record Review of ROD and Work) of Section I (Background), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

64. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Defendant under this Consent Decree not directly in dispute, unless EPA agrees or the Court orders 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 72. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIX (Stipulated Penalties), unless EPA agrees or the Court orders otherwise.

XIX. STIPULATED PENALTIES

65. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 66 and 67 to the United States and the State – to be paid 50% to the United States and 50% to the State – for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVII (Force Majeure). "Compliance" by Settling Defendant shall consist of completion of all payments and activities required under this Consent Decree, or any plan, report, or other deliverable approved under this Consent Decree, in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans, reports, or other deliverables approved under this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

66. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 66.b:

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th day
$2,000	15th through 30th day
$2,500	31st day and beyond

b. Compliance Milestones. The Compliance Milestones include both the timely and adequate submittal, as defined in Section X (EPA Approval of Plans and Other Submissions), of and substantial compliance with the following documents and substantive requirements, as specified in the SOW and this Consent Decree.

(1) Draft RD/RA Work Plan for Operable Unit 3;

(2) Final RD/RA Work Plan for Operable Unit 3;

(3) Annual Operation and Maintenance Report

(4) Final Construction Report;

(5) Remedial Action Report for Operable Unit 3;

(6) Payments for Past Response Costs pursuant to Paragraph 46;

(7) Payments for Future Response Costs or State Future Response Costs pursuant to Paragraph 47.

67. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents submitted pursuant to Section IX (Reporting Requirements):

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th day
$1,500	15th through 30th day
$3,000	31st day and beyond

68. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 81 (Work Takeover), Settling Defendant shall be liable to EPA for a stipulated penalty in the amount of $ 1 million. Stipulated penalties under this Paragraph are in addition to the remedies available under Paragraphs 41 (Funding for Work Takeover) and 81 (Work Takeover).

69. 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: (a) with respect to a deficient submission under Section X (EPA Approval of Plans, Reports, and Other Deliverables), during the period, if any, beginning on the 31st day after EPA's or the State's receipt of such submission until the date that EPA or the State notifies Settling Defendant of any deficiency; or (b) with respect to a decision by the Director of the Superfund Division, EPA Region 4, under Paragraph 62.b or 63.a of Section XVIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendant's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XVIII (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 in this Consent Decree

shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

71. All penalties accruing under this Section shall be due and payable to the United States and the State within 30 days after Settling Defendant's receipt from EPA of a demand for payment of the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section XVIII (Dispute Resolution) within the 30-day period. All payments to the United States under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 49.b (Instructions for Future Response Cost Payments). All payments to the State under this Section shall be made in accordance with Paragraph 47.c. (Payments by Settling Defendant to State).

72. Penalties shall continue to accrue as provided in Paragraph 69 during any dispute resolution period, but need not be paid until the following:

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

b. If the dispute is appealed to this Court, and the United States prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owed by Settling Defendant to EPA and the State within 60 days after receipt of the Court's decision or order, except as provided in Paragraph 72.c;

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by the District Court to be owed to the United States and the State into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA and the State or to Settling Defendant to the extent that it prevails.

73. If Settling Defendant fails to pay stipulated penalties when due, Settling Defendant shall pay Interest on the unpaid stipulated penalties as follows: (a) if Settling Defendant has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 72 until the date of payment; and (b) if Settling Defendant fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 71 until the date of payment. If Settling Defendant fails to pay stipulated penalties and Interest when due, the United States or the State, as appropriate, may institute proceedings to collect the penalties and Interest.

74. The payment of penalties and Interest, if any, shall not alter in any way Settling Defendant's obligation to complete the performance of the Work required under this Consent Decree.

75. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States (except for Settling Federal Agencies) or the State to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(*l*), provided, however, that the United States shall not seek civil penalties pursuant to Section 122(*l*) of CERCLA for any violation for which a stipulated penalty is collected pursuant to this Consent Decree.

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

XX. COVENANTS BY PLAINTIFFS

77. Covenants for Settling Defendant by United States. In consideration of the actions that will be performed and the payments that will be made by Settling Defendant under this Consent Decree, and except as specifically provided in Paragraph 79 (Reservation of Rights by the United States) of this Section and Paragraph 90 (Reservation of Rights by Settling Federal Agencies), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA for the Work, Past Response Costs, and Future Response Costs. These covenants shall take effect upon the Effective Date of this Consent Decree. These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree, except with respect to the covenants provided by Settling Federal Agencies under Paragraph 87. These covenants extend only to Settling Defendant; and to Settling Defendant's prior affiliate CanadianOxy Offshore Production Company (COOPCO), formerly known as Cities Service Company; and do not extend to any other person.

78. Covenant for Settling Federal Agencies. In consideration of the payments that will be made by the United States on behalf of Settling Federal Agencies under this Consent Decree, and except as specifically provided in Paragraph 80 (Reservation of Rights by EPA and federal natural resource trustees), EPA covenants not to take administrative action against Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA, for the Work, Past Response Costs, and all future response costs that EPA may incur after the Effective Date at or in connection with the Site, except for future response costs at or relating to Operable Unit 4. EPA's covenant shall take effect upon the Effective Date of this Consent Decree. EPA's covenant is conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. EPA's covenant extends only to Settling Federal Agencies and does not extend to any other person.

79. Reservation of Rights by the United States. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within their covenants. Notwithstanding any other provision of this Consent Decree, the United States (except for Settling Federal Agencies) reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to:

a. liability for failure by Settling Defendant to meet a requirement of this Consent Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

c. liability based on the ownership of the Site when such ownership commences after signature of this Consent Decree by Settling Defendant;

d. liability based on the operation of the Site when such operation commences after signature of this Consent Decree by Settling Defendant and does not arise solely from Settling Defendant's performance of the Work;

e. liability based on Settling Defendant's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by Settling Defendant;

f. except as otherwise provided in the OU 5 Consent Decree for the Site, liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

g. criminal liability;

h. liability for violations of federal or state law that occur during or after implementation of the Work;

i. liability, prior to achievement and maintenance of Performance Standards in accordance with Paragraph 11, for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, but that cannot be required pursuant to Paragraph 12 (Modification of SOW or Related Work Plans);

j. liability for operable units at the Site other than OU 3, except for Past Response Costs or Interim Response Costs;

k. liability for costs that the United States will incur regarding the Site but that are not (i) within the definition of Future Response Costs or (ii) paid by Settling Federal Agencies pursuant to Paragraph 48 in reimbursement of Settling Defendant's Response Costs;

l. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry regarding the Site.

80. Reservation of Rights by EPA and federal natural resources trustees. EPA and the federal natural resource trustees reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Agencies, with respect to all matters not expressly included within their covenants. EPA and the federal natural resource trustees reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Agencies, with respect to:

a. liability for failure by Settling Federal Agencies to meet a requirement of this Consent Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

c. liability based on the ownership of the Site when such ownership commences after signature of this Consent Decree by Settling Federal Agencies;

d. liability based on the operation of the Site when such operation commences after signature of this Consent Decree by Settling Federal Agencies;

e. liability based on Settling Federal Agencies' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by Settling Federal Agencies;

f. except as otherwise provided in the OU 5 Consent Decree for the Site, liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

g. criminal liability;

h. liability for violations of federal or state law that occur during or after implementation of the Work;

i. liability, prior to achievement and maintenance of Performance Standards in accordance with Paragraph 11, for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, but that cannot be required pursuant to Paragraph 12 (Modification of SOW or Related Work Plans); and

j. liability for Operable Unit 4 at the Site, except for Past Response Costs or Interim Response Costs, and any future operable units at the Site.

81. Work Takeover.

a. In the event EPA determines that Settling Defendant has (1) ceased implementation of any portion of the Work, or (2) is seriously or repeatedly deficient or late in its performance of the Work, or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Settling Defendant. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Settling Defendant a period of ten days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the ten-day notice period specified in Paragraph 81.a, Settling Defendant has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Settling Defendant in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph. Funding of Work Takeover costs is addressed under Paragraph 41.

c. Settling Defendant may invoke the procedures set forth in Paragraph 62 (Record Review) to dispute EPA's implementation of a Work Takeover under Paragraph 81.b. However, notwithstanding Settling Defendant's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 81.b until the earlier of (1) the date that Settling Defendant remedies, to EPA's satisfaction, the circumstances giving rise to EPA's

issuance of the relevant Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with Paragraph 62 (Record Review) requiring EPA to terminate such Work Takeover.

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

83. Covenants by State. In consideration of the actions that will be performed and the payments that will be made by Settling Defendant and the payments to be made by the United States on behalf of the Settling Federal Agencies under this Consent Decree, and except as specifically provided in Paragraph 84 (General Reservations of Rights by the State) of this Section, the State covenants not to sue or to take administrative action against Settling Defendant and Settling Federal Agencies pursuant to CERCLA or Sections 68-212-206 and 207 of the Tennessee Hazardous Waste Management Act of 1983, T.C.A. §§68-212-206 and 207, (a) against Settling Defendant for the Work and State Future Response Costs, and (b) against Settling Federal Agencies for the Work, State Future Response Costs, response costs incurred by the State at or in connection with the Site through the Effective Date, and any other response costs that the State incurs after the Effective Date at or in connection with the Site except for Operable Unit 4. In addition, the State covenants not to sue or to take administrative action against Settling Defendant and Settling Federal Agencies with respect to any and all liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any related natural resource damage assessments, except as specifically reserved in Paragraph 84.f. These covenants shall take effect as to Settling Defendant and Settling Federal Agencies upon the Effective Date of this Consent Decree. These covenants as to Settling Defendant and Settling Federal Agencies are conditioned upon the satisfactory performance by Settling Defendant and Settling Federal Agencies of their respective obligations under this Consent Decree. These covenants extend only to Settling Federal Agencies; Settling Defendant; and to Settling Defendant's prior affiliate CanadianOxy Offshore Production Company (COOPCO), formerly known as Cities Service Company; and do not extend to any other person.

84. General Reservations of Rights by the State. The State reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant and Settling Federal Agencies, with respect to all matters not expressly included within their covenants. Notwithstanding any other provision of this Consent Decree, the State reserves all rights against Settling Defendant, and Settling Federal Agencies, with respect to:

a. liability for failure by Settling Defendant or Settling Federal Agencies to meet a requirement of this Consent Decree;

b. with respect to Settling Defendant only, liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of OU 3 of the Site;

c. liability based on the ownership of the Site by Settling Defendant or Settling Federal Agencies when such ownership commences after signature of this Consent Decree by Settling Defendant or Settling Federal Agencies;

d. liability based on the operation of OU 3 of the Site by Settling Defendant when such operation commences after signature of this Consent Decree by Setting Defendant and does not arise solely from Settling Defendant's performance of the Work and liability based

on the operation of the Site by Settling Federal Agencies when such operation commences after signature of this Consent Decree by Settling Federal Agencies;

e. liability based on Settling Defendant's or Settling Federal Agencies' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with OU 3 of the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by such Party;

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any related natural resource damage assessments, resulting from the failure of Settling Defendant to comply with the terms of this Consent Decree;

g. criminal liability;

h. liability for violations of federal or state law that occur during or after implementation of the Work;

i. liability, prior to achievement and maintenance of Performance Standards in accordance with Paragraph 11, for additional response actions that EPA or the State determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, but that cannot be required pursuant to Paragraph 12 (Modification of SOW or Related Work Plans);

j. with respect to Settling Defendant only, liability for operable units at the Site other than OU 3 or any final response action;

k. with respect to Settling Defendant only, liability for costs that the State has incurred or will incur regarding the Site but that are not within the definition of State Future Response Costs;

l. with respect to Settling Federal Agencies only, liability for Operable Unit 4; and

m. liability for costs incurred or to be incurred by the Tennessee Department of Health regarding the Site.

XXI. COVENANTS BY SETTLING DEFENDANT AND SETTLING FEDERAL AGENCIES

85. Covenants by Settling Defendant. Subject to the reservations in Paragraph 89, Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State with respect to the Work, Past Response Costs, Future Response Costs, State Future Response Costs, Settling Defendant's Response Costs and this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund through CERCLA Sections 106(b)(2), 107, 111, 112 or 113, or any other provision of law;

b. any claims under CERCLA Sections 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Work, Past Response Costs, Future Response Costs, State Future Response Costs, Settling Defendant's Response Costs, and this Consent Decree; or

c. any claims arising out of response actions at or in connection with the Site including any claim under the United States Constitution, the Tennessee Constitution, the Tucker Act, 28 U.S.C. §1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

86. Covenant by Settling Defendant for Settling Federal Agencies. Subject to the reservations in Paragraph 89, and in consideration of the payment to be made by the United States on behalf of Settling Federal Agencies under this Consent Decree, Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against Settling Federal Agencies with respect to the Work, past or future response actions regarding the Site (except for future response actions relating to OU 4), Past Response Costs, Future Response Costs, State Future Response Costs, Settling Defendant's Response Costs, and this Consent Decree.

87. Covenant by Settling Federal Agencies.

a. Settling Federal Agencies agree not to assert any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund (established pursuant to Internal Revenue Code 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, or 113, or any other provision of law with respect to the Work, past response actions regarding the Site, Past Response Costs, Future Response Costs, State Future Response Costs, Settling Defendant's Response Costs, and this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by Settling Federal Agencies in the performance of their duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

b. Subject to the reservations in Paragraph 90, Settling Federal Agencies also covenant not to sue and agree not to assert any claims or causes of action against Settling Defendant with respect to the Work, past or future response actions regarding the Site (except for future response actions relating to OU 4), Past Response Costs, Future Response Costs, State Future Response Costs, Settling Defendant's Response Costs, and this Consent Decree.

88. Except as provided in Paragraph 97 (Res Judicata and Other Defenses), the covenants in this Section XXI shall not apply if the United States or the State brings a cause of action or issues an order pursuant to any of the reservations in Section XX (Covenants by Plaintiffs), other than in Paragraphs 79.a, 80.a (claims for failure to meet a requirement of the Decree), 79.g, 80.g (criminal liability), 79.h and 80.h (violations of federal/state law during or after implementation of the Work), but only to the extent that Settling Defendant's or Settling Federal Agencies' claims arise from the same response action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

89. Reservation of Rights by Settling Defendant.

a. Settling Defendant reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, 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, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the

foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Settling Defendant's plans, reports, other deliverables or activities.

b. Settling Defendant also reserves, and this Consent Decree is without prejudice to, all claims that it may have under CERCLA, 42 U.S.C. § 9601 et seq., at the Site against Settling Federal Agencies with respect to: (i) response costs at or in connection with Operable Unit 4 of the Site; or (ii) damages for injury to, destruction of, or loss of natural resources and for the costs of any natural resource damage assessments at the Site.

90. Reservation of Rights by Settling Federal Agencies. Settling Federal Agencies reserve, and this Consent Decree is without prejudice to, all claims that they may have under CERCLA, 42 U.S.C. § 9601 et seq., at the Site against Settling Defendant with respect to: (i) response costs at or in connection with Operable Unit 4 of the Site; (ii) damages for injury to, destruction of, or loss of natural resources and for the costs of any natural resource damage assessments at the Site; or (iii) any claims made by EPA, any Federal natural resource damage trustee, or the State, pursuant to the reservations of this Consent Decree.

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

92. Settling Defendant agrees not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.

XXII. EFFECT OF SETTLEMENT; CONTRIBUTION

93. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that 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. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

94. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially approved settlement pursuant to which Settling Defendant and each Settling Federal Agency has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are (i) the Work, (ii) Past Response Costs, (iii) Future Response Costs, (iv) State Future Response Costs, (v) Settling Defendant's Response Costs, and (vi) any and all claims that the State may have against Settling Federal Agencies and Settling Defendant for damages for injury to, destruction of, or loss of natural resources, and for the costs of any related natural resource damage assessments at the Site, except as specifically reserved in Paragraph 84.f. Settling Defendant's prior affiliate COOPCO, formerly known as Cities Service Company, is also entitled to protection from contribution actions or claims as provided by Section 113(f)(2)

of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided for by law, for "matters addressed" in this Consent Decree.

95. Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify the United States and the State in writing no later than 60 days prior to the initiation of such suit or claim.

96. Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing the United States and the State within ten days after service of the complaint on Settling Defendant. In addition, Settling Defendant shall notify the United States and the State within ten days after service or receipt of any Motion for Summary Judgment and within ten days after receipt of any order from a court setting a case for trial.

97. Res Judicata and Other Defenses. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant (and, with respect to a State action, Settling Federal Agencies) shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State 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 XX (Covenants by Plaintiffs).

XXIII. ACCESS TO INFORMATION

98. Settling Defendant shall provide to EPA and the State, upon request, copies of the last draft or final version of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within their possession or control or that of their contractors or agents relating to activities at OU 3 of the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Settling Defendant shall also make available, upon request, to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

99. Business Confidential and Privileged Documents.

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

b. Settling Defendant may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling

Defendant asserts such a privilege in lieu of providing Records, it shall provide Plaintiffs with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the contents of the Record; and (6) the privilege asserted by Settling Defendant. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged or protected portion only. Settling Defendant shall retain all Records that it claims to be privileged or protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Settling Defendant's favor.

c. No Records created or generated pursuant to the requirements of this Consent Decree shall be withheld from the United States or the State on the grounds that they are privileged or confidential.

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

XXIV. RETENTION OF RECORDS

101. Until ten years after Settling Defendant's receipt of EPA's notification pursuant to Paragraph 43.b (Completion of the Work), Settling Defendant shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that it must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

102. The United States acknowledges that Settling Federal Agencies (a) are subject to all applicable Federal record retention laws, regulations, and policies; and (b) believe that they have fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

103. At the conclusion of this record retention period, Settling Defendant shall notify the United States and the State at least 90 days prior to the destruction of any such Records, and, upon request by the United States or the State, Settling Defendant shall deliver any such Records to EPA or the State. Settling Defendant may assert that certain Records are privileged or protected under the attorney-client privilege or any other privilege or protection recognized by federal law. If Settling Defendant asserts such a privilege or protection, it shall provide Plaintiffs with the following: (a) the title of the Record; (b) the date of the Record; (c) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (d) the name and title

of each addressee and recipient; (e) a description of the subject of the Record; and (f) the privilege or protection asserted by Settling Defendant. If a claim of privilege or protection applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged or protected portion only. Settling Defendant shall retain all Records that it claims to be privileged or protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Settling Defendant's favor. However, no Records created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged, protected or confidential.

104. Settling Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since the earlier of 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 and State requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XXV. NOTICES AND SUBMISSIONS

105. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, Settling Federal Agencies, the State, and Settling Defendant, respectively. Notices required to be sent to EPA, and not to the United States, under the terms of this Consent Decree should not be sent to the U.S. Department of Justice. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the CD regarding such Party.

As to the United States

EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
Eescdcopy.enrd@usdoj.gov
Re: DJ # 90-11-3-10404/1

and

Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
Washington, D.C. 20044-7611

	paul.cirino@usdoj.gov Re: DJ# 90-11-6-20273
As to EPA:	Franklin E. Hill Director, Superfund Division United States Environmental Protection Agency Region 4 Atlanta Federal Center 61 Forsyth Street Atlanta, Georgia 30303-8960
and:	Loften Carr EPA Project Coordinator United States Environmental Protection Agency, Region 4 Atlanta Federal Center 61 Forsyth Street Atlanta, Georgia 30303-8960
As to the Regional Financial Management Officer:	Paula V. Painter Superfund Enforcement & Information Management Branch US Environmental Protection Agency Region 4 61 Forsyth Street, SW Atlanta, GA 30303-8960
As to the EPA Cincinnati Finance Center:	EPA Cincinnati Finance Center 26 W. Martin Luther King Drive Cincinnati, Ohio 45268
As to the State:	Andy Binford Director of Remediation Tennessee Department of Environment and Conservation William R. Snodgrass TN Tower, 14th Floor 312 Rosa L. Parks Avenue Nashville, TN 37243
As to Settling Defendant:	Rick Passmore Settling Defendant's Project Coordinator 5005 LBJ Freeway, Ste. 1350 Dallas, TX 75244

Rick_Passmore@oxy.com

and:

Frank A. Parigi
Vice President and General Counsel
5005 LBJ Freeway, Ste. 1350
Dallas, TX 75244
Frank_Parigi@oxy.com

XXVI. RETENTION OF JURISDICTION

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

XXVII. APPENDICES

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

"Appendix A" is the ROD.

"Appendix B" is the SOW.

"Appendix C" is the description and/or map of the Site.

"Appendix D" is the draft form of Proprietary Controls.

"Appendix E" is the performance guarantee.

"Appendix F" is the Technical Assistance Plan.

"Appendix G" is the Memorandum of Understanding regarding the Technical Assistance Plan.

XXVIII. COMMUNITY INVOLVEMENT

108. If requested by EPA or the State, Settling Defendant shall participate in community involvement activities pursuant to the community involvement plan to be developed by EPA. After consulting with Settling Defendant, EPA will determine the appropriate role for Settling Defendant under the Plan. Settling Defendant shall also cooperate with EPA and the State in providing information regarding the Work to the public. As requested by EPA or the State, Settling Defendant shall participate in the preparation of such information for dissemination to the public and in public meetings that may be held or sponsored by EPA or the State to explain activities at or relating to the Site.

109. Settling Defendant shall also continue its Technical Assistance Plan ("TAP") arrangement with Ducktown Basin Museum (a) to receive services from (an) independent technical advisor(s) who can help group members understand Site cleanup issues; and (b) to

share this information with others in the community during the Work conducted pursuant to this Consent Decree. Settling Defendant shall revise the existing TAP and Memorandum of Understanding ("MOU") no later than sixty (60) Days from the Effective Date of this Decree to state that Settling Defendant will provide and arrange for any additional assistance needed if the selected community group demonstrates such a need as provided in the SOW, and submit the revised TAP to EPA for approval. Upon its approval by EPA, the revised TAP shall become incorporated into and enforceable under this Consent Decree.

110. If the existing TAP is terminated prior to EPA's issuance of a Notice of Completion of the Work pursuant to Paragraph 43.b, and if requested by EPA, Settling Defendant shall provide another TAP for the Site with a different qualified community group in accordance with the provisions set forth in the SOW.

111. Costs incurred by the United States under this Section, including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), shall be considered Future Response Costs that Settling Defendant shall pay pursuant to Section XV (Payments for Response Costs).

XXIX. MODIFICATION

112. Except as provided in Paragraph 12 (Modification of SOW or Related Work Plans), material modifications to this Consent Decree, including the SOW, shall be in writing, signed by the United States and Settling Defendant, and shall be effective upon approval by the Court. Except as provided in Paragraph 12, non-material modifications to this Consent Decree, including the SOW, shall be in writing and shall be effective when signed by duly authorized representatives of the United States and Settling Defendant. All modifications to the Consent Decree, other than the SOW, also shall be signed by the State, or a duly authorized representative of the State, as appropriate. A modification to the SOW shall be considered material if it fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any modification to the SOW, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

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

XXX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

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

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

XXXI. SIGNATORIES/SERVICE

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

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

118. Settling Defendant shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant 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. Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXXII. FINAL JUDGMENT

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

120. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State, and Settling Defendant. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS __ DAY OF _____, 20__.

_____

United States District Judge

Signature Page for Consent Decree regarding Operable Unit 3 at the Copper Basin Mining District Superfund Site

FOR THE UNITED STATES OF AMERICA

Date

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

4/22/2016
Date

SHEILA McANANEY
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

4.22.2016
Date

PAUL CIRINO
Trial Attorney
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

Signature Page for Consent Decree regarding Operable Unit 3 at the Copper Basin Mining District Superfund Site

3/17/16
Date

FRANKLIN E. HILL
Director, Superfund Division
U.S. Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303-8960

3/31/16
Date

Bilal Harris

BILAL M. HARRIS
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303-8960

Signature Page for Consent Decree regarding Operable Unit 3 at the Copper Basin Mining District Superfund Site

FOR THE STATE OF TENNESSEE

2-4-16
Date

ELIZABETH P. MCCARTER
Senior Counsel
Tennessee Attorney General's Office
Environmental Division
P.O. Box 20207
Nashville, TN 37202

2/4/16
Date

E. JOSEPH SANDERS
General Counsel
Tennessee Department of Environment
and Conservation
William R. Snodgrass TN Tower, 2nd Floor
312 Rosa L. Parks Avenue
Nashville, TN 37243

Signature Page for Consent Decree regarding Operable Unit 3 at the Copper Basin Mining District Superfund Site

FOR OXY USA INC., and on behalf of Glenn Springs Holdings, Inc.

1/11/2016
Date

MICHAEL G. ANDERSON
Vice President
5005 LBJ Freeway, Ste. 1350
Dallas, TX 75244

Agent Authorized to Accept Service on Behalf of Above-signed Party for Purposes of this Consent Decree:

~~Stephen E. Fitzgerald~~
~~Sr. Environmental Counsel~~
~~5005 LBJ Freeway, Ste. 1350~~
~~Dallas, TX 75244~~
~~972-687-7515~~
~~Stephen_Fitzgerald@oxy.com~~

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