IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA AUGUSTA DIVISION

UNITED STATES OF AMERICA and STATE OF GEORGIA,	*	
Plaintiffs,	*	
v.	*	CV 111-163
AIRGAS CARBONIC, INC., et al.,	*	
Defendants.	*	

ENTRY OF THE CONSENT DECREE

Presently pending before the Court is the United States of America and the State of Georgia's Motion for Entry of the Consent Decree. (Doc. no. 6.) It is hereby **ORDERED** that said motion is **GRANTED**. The parties' proposed Consent Decree, with the corrected Appendix D-1, is **APPROVED** and **ADOPTED** by this Court as a final judgment.

It is further **ORDERED** that, in accordance with the Consent Decree, the Court will retain jurisdiction over both the subject matter of the Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of the Consent Decree. However, until further ordered, the Clerk is **DIRECTED** to **ADMINISTRATIVELY CLOSE** this case.

ORDER ENTERED at Augusta, Georgia, this 9th day of February, 2012.

HONORABLE J. RANDAL HALL
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA

TABLE OF CONTENTS

I. BACKGROUND

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

B. The United States in its complaint seeks, *inter alia*: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Alternate Energy Resources, Inc. ("AER") Superfund Site ("Site") in Augusta, Richmond County, Georgia, together with accrued interest; and (2) performance of response actions at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Georgia (the "State") on September 30, 2010, of negotiations with potentially responsible parties ("PRPs") regarding the implementation of the Remedial Design and Remedial Action for the Site, and EPA provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. The State, on behalf of the Director of the Environmental Protection Division ("GA EPD") of the Georgia Department of Natural Resources, joined the United States as a Plaintiff in its complaint and seeks, *inter alia*: (1) reimbursement of costs incurred for the Site, together with accrued interest; and (2) performance of response actions at the Site consistent with the NCP and Code Sections 12-8-71, 12-8-96, and 12-8-96.1 of the Georgia Hazardous Site Response Act ("HSRA").

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Department of the Interior and the Georgia Department of Natural Resources on September 30, 2010, of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on April 19, 2006, 71 Fed. Reg. 20016.

G. On October 16, 2006, in response to a release or a substantial threat of a release of hazardous substances at or from the Site, a group of PRPs commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Site, pursuant to 40 C.F.R. § 300.430 and an executed Administrative Settlement Agreement and Order on Consent. This group of PRPs completed a Remedial Investigation ("RI") Report on November 11, 2008, and a Feasibility Study ("FS") Report on April 19, 2010.

H. On June 29, 2010, 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 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.

I. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on September 27, 2010, on which the State had a reasonable opportunity to review and comment and on which the State has given its

concurrence. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

J. The Settling Defendants to this Consent Decree are comprised of three distinct groups of parties: Settling Performing Defendants, Settling *De Minimis* Defendants, and Settling *De Minimis* State Agencies. The Settling Defendants do not admit any liability arising out of the transactions or occurrences alleged in the complaint, nor do they admit or acknowledge that the 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. The Settling Federal Agencies to this Consent Decree are comprised of two distinct groups of parties: Settling Non-Performing Federal Agencies and Settling *De Minimis* Federal Agencies. The Settling Federal Agencies do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by Settling Defendants or any claim by the State.

K. Information currently known to EPA and the State indicates that the amount of hazardous substances sent to the Site by the Settling *De Minimis* Parties (Settling *De Minimis* Defendants, Settling *De Minimis* Federal Agencies, and Settling *De Minimis* State Agencies) is minimal in comparison to other hazardous substances at the Site, and that the toxic or other hazardous effects of the hazardous substances contributed to the Site by the Settling *De Minimis* Parties do not contribute disproportionately to the cumulative toxic or other hazardous effects of the hazardous substances at the Site. Accordingly, pursuant to Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A), EPA has determined that the amount and the toxic or other hazardous effects of the substances contributed by each Settling *De Minimis* Party is minimal in comparison to other hazardous substances contributed to the Site. EPA further has

determined that prompt settlement with each Settling *De Minimis* Party is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

L. Based upon 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 Performing Defendants 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 Remedial Action set forth in the ROD and the Work to be performed by Settling Performing Defendants 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, which are comprised of the United States, the State, and Settling Defendants, recognize and agree, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and that this settlement and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b); and pendent jurisdiction over the claims asserted by the State arising under the laws of Georgia. This Court also has personal jurisdiction over the United States, the State, and Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, the United States, the State, and

Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The United States, the State, and Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

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

3. Settling Performing Defendants shall provide a copy of this Consent Decree to each supervisory contractor and any other contractors deemed necessary by Settling Performing Defendants who are hired to perform the Work required by this Consent Decree and to each person representing any Settling Performing Defendant with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Performing Defendants shall nonetheless be responsible for ensuring that their 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 Performing Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided 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:

"Alternate Energy Resources, Inc. Property" or "AER Property" shall mean the approximately 2.6 acres of property, located at 2736 Walden Drive in Augusta, Richmond County, Georgia, on which Alternate Energy Resources, Inc. formerly operated its business.

"Alternate Energy Resources Special Account" shall mean the special account, within the EPA Hazardous Substances Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"Alternate Energy Resources Disbursement Special Account" shall mean the special account, within the EPA Hazardous Substances Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and Paragraph 61 of this Consent Decree.

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

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

"Cost Matrix" shall mean the three documents, set forth in Appendix C, Appendix D-2, and Appendix E, that collectively sets forth the amounts of payment due for all Settling *De*

Minimis Parties and includes an amount for: (a) Past Response Costs; (b) State Past Response Costs; (c) projected Future Response Costs to be incurred at or in connection with the Site; and (d) a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any other person, will exceed the estimated total response costs upon which Settling *De Minimis* Parties' payments are based.

"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 holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall be the 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 any successor departments or agencies of the United States.

"GA EPD" shall mean the Environmental Protection Division of the Georgia Department of Natural Resources, and any successor departments or agencies of the State.

"Future Oversight Costs" shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising Settling Performing Defendants' performance of the Work to determine whether such performance is consistent with the requirements of this Consent Decree, including costs incurred in reviewing plans, reports, and other deliverables submitted pursuant to this Consent Decree, as well as costs incurred in overseeing implementation of the

Work; however, Future Oversight Costs do not include, *inter alia*: the costs incurred by the United States pursuant to Sections VII (Remedy Review), IX (Access and Institutional Controls), XV (Emergency Response), and Paragraph 47 (Funding for Work Takeover), or the costs incurred by the United States in enforcing the terms of this Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to Section XX (Dispute Resolution) and all litigation costs.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports, and other 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 VII (Remedy Review), IX (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), XV (Emergency Response), Paragraph 47 (Funding for Work Takeover), and Section XXXI (Community Relations). Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs Settling Defendants have agreed to pay under this Consent Decree that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from April 7, 2011, to the Effective Date.

"Institutional Controls" 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 Materials at the Site; (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 the Site.

"Institutional Control Implementation and Assurance Plan" or "ICIAP" shall mean the plan for implementing, maintaining, monitoring, and reporting on the Institutional Controls set forth in the ROD, prepared in accordance with the SOW.

"Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between April 7, 2011, and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

"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.

"Interest Earned" shall mean interest earned on amounts in the Alternate Energy Resources Disbursement Special Account, which shall be computed monthly at a rate based on the annual return on investments of the Hazardous Substance Superfund. The applicable rate of interest shall be the rate in effect at the time the interest accrues.

"Municipal Solid Waste" shall mean waste material: (a) generated by a household (including a single or multifamily residence); or (b) generated by a commercial, industrial or institutional entity, to the extent that the waste material (i) is essentially the same as waste normally generated by a household; (ii) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and (iii) contains a relative

quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.

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

"Operation and Maintenance" or "O&M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to Section VI (Performance of the Work by Settling Defendants) 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.

"Parties" shall mean the United States, the State of Georgia, and Settling Defendants.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through April 7, 2011, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in the ROD and the SOW and any modified standards established pursuant to this Consent Decree, including any additional performance standards identified by EPA during Remedial Design.

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

"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, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on September 27, 2010, by the EPA Region 4 Superfund Division Director, and all attachments thereto. The ROD is attached as Appendix G.

"Remedial Action" shall mean all activities Settling Performing Defendants are required to perform under the Consent Decree to implement the ROD, in accordance with the SOW, the final Remedial Design and Remedial Action Work Plans, and other plans approved by EPA, including implementation of Institutional Controls, until the Performance Standards are met, and excluding performance of the Remedial Design, O&M, and the activities required under Section XXVII (Retention of Records).

"Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any modifications thereto, made pursuant to this Consent Decree.

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

"Remedial Design Work Plan" shall mean the document developed pursuant to Paragraph 10 of this Consent Decree and approved by EPA, and any modifications thereto, made pursuant to this Consent Decree.

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

"Settling Defendants" shall mean those Parties identified in Appendix A, who are either Settling Performing Defendants, Settling *De Minimis* Defendants, or Settling *De Minimis* State Agencies.

"Settling *De Minimis* Defendants" shall mean those Parties identified in the Cost Matrix in Appendix C who have signed a signature page and, with the exception of W.R. Grace & Co., remitted payment in full to their steering committee representative prior to EPA's execution of this Consent Decree.

"Settling *De Minimis* Federal Agencies" shall mean those Parties identified in the Cost Matrix in Appendix D-2 and the Army Air Force Exchange Service.

"Settling *De Minimis* Parties" shall mean all Settling *De Minimis* Defendants, Settling *De Minimis* State Agencies, and Settling *De Minimis* Federal Agencies. The criteria for qualifying as a Settling *De Minimis* Party are set forth in Appendix K.

"Settling *De Minimis* State Agencies" shall mean those Parties identified in the Cost Matrix in Appendix E.

"Settling Federal Agencies" shall mean Settling *De Minimis* Federal Agencies and Settling Non-Performing Federal Agencies.

"Settling Non-Performing Federal Agencies" shall mean those Parties identified in Appendix D-1.

"Settling Performing Defendants" shall mean those Parties identified in Appendix B.

"Site" shall mean the Alternate Energy Resources, Inc. ("AER") Superfund Site, encompassing the AER Property and the areal extent of soil and groundwater contamination emanating from the AER Property, including the contaminated groundwater plume beneath and downgradient of the AER Property, depicted generally on the map attached as Appendix F.

"State" shall mean the State of Georgia.

"State Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the State in connection with the Site between April 7, 2011, and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

"State Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the State incurs 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 VII (Remedy Review), IX (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), XV (Emergency Response), Paragraph 47 (Funding for Work Takeover), and Section XXXI (Community Relations). State Future Response Costs shall also include all State Interim Response Costs, and all Interest on those State Past Response Costs Settling Defendants have agreed to pay under this Consent Decree that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from April 7, 2011, to the Effective Date.

"State Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the State paid at or in connection with the Site through April 7, 2011, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

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

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

"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 Settling Federal Agencies.

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities and obligations Settling Performing Defendants are required to perform under this Consent Decree, except the activities required under Section XXVII (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 the Site by Settling Performing Defendants, to pay response costs of the Plaintiffs, and to resolve the claims of Plaintiffs against Settling Defendants and the claims of the Settling Defendants, which have been or could have been asserted against the United States, the State, or any other Settling Defendant, with regard to this Site as provided in this Consent Decree. The objectives of the Parties in entering into this Consent Decree also are to provide all Settling *De Minimis* Parties with contribution protection with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

6. Commitments by Settling Defendants and Settling Federal Agencies.

(a) Settling Performing Defendants. Settling Performing Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth in this Consent Decree or developed by Settling Performing Defendants and approved by EPA pursuant to this Consent Decree. Settling Performing Defendants shall pay the United States and the State for Past Response Costs, State Past Response Costs, Future Response Costs, and State Future Response Costs as provided in this Consent Decree.

(b) The obligations of Settling Performing Defendants to finance and perform the Work, including obligations to pay amounts due under this Consent Decree, are joint and several. In the event of the insolvency of any Settling Performing Defendant or the failure by any

Settling Performing Defendant to implement any requirement of this Consent Decree, the remaining Settling Performing Defendants shall complete all such requirements.

(c) Settling Non-Performing Federal Agencies. The Settling Non-Performing Federal Agencies shall pay the Settling Performing Defendants in accordance with the terms of Paragraph 55, below, in order to resolve their obligations for the Work, Past Response Costs, State Past Response Costs, Future Response Costs, and State Future Response Costs at the Site, as well as recoverable costs under Section 107 of CERCLA, 42 U.S.C. § 9607, incurred by the Settling Performing Defendants prior to the Effective Date.

(d) Settling *De Minimis* Parties. Settling *De Minimis* Parties shall pay EPA the amount designated for each Settling *De Minimis* Party in accordance with the Cost Matrix and as provided in this Consent Decree. Settling *De Minimis* Defendants and Settling *De Minimis* Federal Agencies shall pay Settling Performing Defendants, and Settling *De Minimis* State Agencies shall pay the State, for their respective shares of State Past Response Costs in accordance with the Cost Matrix and as provided in this Consent Decree.

7. Compliance With Applicable Law. All activities undertaken by Settling Performing Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Performing Defendants must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be 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 Performing Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

(b) Settling Performing Defendants may seek relief under the provisions of Section XIX (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 they have 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 PERFORMING DEFENDANTS

9. Selection of Supervising Contractor.

(a) All aspects of the Work to be performed by Settling Performing Defendants pursuant to Sections VI (Performance of the Work by Settling Performing Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), IX (Access and Institutional Controls), and XV (Emergency Response) shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. No later than the lodging of this Consent Decree, Settling Performing

Defendants shall notify EPA and the State in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Settling Performing Defendants 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 Performing Defendants propose to change a Supervising Contractor, Settling Performing Defendants 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 Performing Defendants in writing. Settling Performing Defendants shall submit to EPA and the State a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Performing Defendants 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 of EPA's authorization to proceed.

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

10. Remedial Design.

(a) In accordance with the schedules established in Sections IV(A), IV(B), and IV(D) of the SOW, Settling Performing Defendants shall submit to EPA and the State a demolition work plan and soil and groundwater work plans for the design of the Remedial Action at the Site ("Remedial Design Work Plans" or "RD Work Plans"). The Remedial Design Work Plans shall provide for design of the remedy set forth in the ROD, in accordance with the SOW and for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree, and/or the SOW. The Remedial Design Work Plans and all other deliverables required as part of the Remedial Design, as set forth in the SOW, shall, upon approval by EPA, be incorporated into and enforceable under this Consent Decree.

(b) The soil component of the Remedial Design shall include, but not be limited to, all deliverables identified in Section IV(B) of the SOW.

(c) The groundwater component of the Remedial Design shall include, but not be limited to, all deliverables identified in Section IV(D) of the SOW.

(d) Upon approval of the Remedial Design Work Plans by EPA, after a reasonable opportunity for review and comment by the State, and submission of the Health and

Safety Plan for all field activities to EPA and the State, Settling Performing Defendants shall implement the Remedial Design Work Plans. Settling Performing Defendants shall submit to EPA and the State all plans, reports, and other deliverables required under the approved Remedial Design Work Plans in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Performing Defendants shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plans.

11. Remedial Action.

(a) In accordance with the schedules established in Sections IV(C) and IV(E) of the SOW, Settling Performing Defendants shall submit to EPA and the State work plans for the performance of the soil and groundwater Remedial Action at the Site ("Remedial Action Work Plans"). The Remedial Action Work Plans shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plans and approved by EPA. The Remedial Action Work Plans and all other deliverables required as part of the Remedial Action shall, upon approval by EPA, be incorporated into and enforceable under this Consent Decree.

(b) The Soil component of the Remedial Action shall include, but not be limited to, all deliverables identified in Section IV(C) of the SOW.

(c) The Groundwater component of the Remedial Action shall include, but not be limited to, all deliverables identified in Section IV(E) of the SOW.

(d) Upon approval of the Remedial Action Work Plans by EPA, after a reasonable opportunity for review and comment by the State, Settling Performing Defendants shall implement the activities required under the Remedial Action Work Plans. Settling Performing Defendants shall submit to EPA and the State all reports and other deliverables required under the approved Remedial Action Work Plans in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Performing Defendants shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plans.

12. Settling Performing Defendants shall continue to implement the Remedial Action until the Performance Standards are achieved. Settling Performing Defendants shall implement O&M for so long thereafter as is required by this Consent Decree.

13. 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 require that such modification be incorporated in the SOW and/or such work plans, or EPA may issue such modification in writing and shall notify Settling Performing Defendants of such modification. For the purposes of this Paragraph and Paragraphs 49 (Completion of the Remedial Action) and 50 (Completion of the Work) only, the "scope of the remedy set forth in the ROD" includes remediating, to Performance Standards, all soil, sediment, and groundwater contamination related to the Site, including contamination that is identified on

or beyond the AER Property boundary, following the sampling that will be conducted by the Settling Performing Defendants in accordance with the ROD and the SOW. If Settling Performing Defendants object to the modification they may, within 30 days after EPA's notification, seek dispute resolution under Paragraph 78 (Record Review).

(b) The SOW and/or related work plans shall be modified: (i) in accordance with the modification issued by EPA; or (ii) if Settling Performing Defendants invoke 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 Performing Defendants shall implement all work required by such modification. Settling Performing Defendants shall incorporate the modification into the Remedial Design or Remedial Action Work Plan under Paragraphs 10 or 11, as appropriate.

(c) Settling Performing Defendants shall implement any work required by any modifications incorporated in the SOW and/or in the work plans developed pursuant to the SOW in accordance with this Paragraph.

(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.

14. Nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

15. Off-Site Shipment of Waste Material.

(a) Settling Performing Defendants may ship Waste Material from the Site to an off-Site facility only if they verify, 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 Performing Defendants may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide 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 10 cubic yards. The written notice shall include the following information, if available: (i) the name and location of the receiving facility; (ii) the type and quantity of Waste Material to be shipped; (iii) the schedule for the shipment; and (iv) the method of transportation. Settling Performing Defendants 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 Performing Defendants shall provide the written notice after the award of the contract for Remedial Action construction and before the Waste Material is shipped.

VII. REMEDY REVIEW

16. Periodic Review. Settling Performing Defendants shall conduct any studies and investigations that EPA requests in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA, 42 U.S.C.§ 9621(c), and any applicable regulations.

17. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select

further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

18. Opportunity To Comment. Settling Performing Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. § 9613(k)(2) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

19. Settling Performing Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, EPA may require Settling Performing Defendants to perform such further response actions, but only to the extent that the reopener conditions in Paragraph 95 or Paragraph 96 (United States' Pre- and Post-Certification Reservations) are satisfied. Settling Performing Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute (a) EPA's determination that the reopener conditions of Paragraph 95 or Paragraph 96 of Section XXII (Covenants by Plaintiff) are satisfied, (b) EPA's determination that the Remedial Action is not protective of human health and the environment, or (c) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 78 (Record Review).

20. Submission of Plans. If Settling Performing Defendants are required to perform further response actions pursuant to Paragraph 19, they shall submit a plan for such response action to EPA for approval in accordance with the procedures of Section VI (Performance of the Work by Settling Performing Defendants). Settling Performing Defendants shall implement the approved plan in accordance with this Consent Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

21. Quality Assurance.

(a) Settling Performing Defendants 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 Performing Defendants 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 Performing Defendants 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 Performing Defendants shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Performing Defendants in implementing this Consent Decree. In addition, Settling Performing Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Performing Defendants shall ensure that the laboratories they utilize 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 Superfund Methods, ISM01.2," 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 Decree; however, upon approval by EPA, after opportunity for review and comment by the State, Settling Performing Defendants may use other analytical methods which are as stringent as or more stringent than the CLP-approved methods. Settling Performing Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Performing Defendants shall use only laboratories that have a documented Quality System which 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 Performing Defendants 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.

22. Upon request, Settling Performing Defendants shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives. Settling Performing Defendants shall notify EPA and the State not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the State shall have the right to take any additional samples that EPA or the State deem necessary. Upon request, EPA and the State shall allow Settling Performing Defendants to take split or duplicate samples of

any samples they take as part of Plaintiffs' oversight of Settling Performing Defendants' implementation of the Work.

23. Settling Performing Defendants shall submit to EPA and the State copies, via electronic media, of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Performing Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

24. 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.

IX. ACCESS AND INSTITUTIONAL CONTROLS

25. If the Site, or any other real property where access or land/water use restrictions are needed, is owned or controlled by any of Settling Defendants:

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

(i) Monitoring the Work;

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

(iii) Conducting investigations regarding contamination at or near the Site;

(iv) Obtaining samples;

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

(vi) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;

(vii) Implementing the Work pursuant to the conditions set forth in Paragraph 99 (Work Takeover);

(viii) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Performing Defendants or their agents, consistent with Section XXVI (Access to Information);

(ix) Assessing Settling Performing Defendants' compliance with the Consent Decree;

(x) Determining whether 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

(xi) Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls and the requirements of the ICIAP.

(b) commencing on the date of lodging of the Consent Decree, such Settling Defendants shall not use 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 Materials, or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action. The restrictions shall include, but not be limited to: (i) limiting future Site

use to commercial, industrial, and/or recreational purposes; and (ii) preventing groundwater use at the Site; and

(c) such Settling Defendants shall:

(i) Execute and record in the appropriate land records office Proprietary Controls that: (1) grant a right of access to conduct any activity regarding the Consent Decree including, but not limited to, those activities listed in Paragraph 25(a), and (2) grant the right to enforce the land/water use restrictions set forth in Paragraph 25(b), including, but not limited to, the specific restrictions listed therein and any land/water use restrictions listed in the ICIAP, as further specified in Paragraph 25(c)(ii)-(iv).

(ii) The Proprietary Controls shall be granted to one or more of the following persons, as determined by EPA: (1) the United States, on behalf of EPA, and its representatives, (2) the State and its representatives, (3) the other Settling Defendants and their representatives, and/or (4) 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 any Settling Defendants pursuant to this Paragraph 25(c)(ii)(3), then such Settling Defendants shall monitor, maintain, report on, and enforce such Proprietary Controls.

(iii) In accordance with the schedule set forth in the ICIAP, submit to EPA for review and approval regarding such real property: (1) a draft Proprietary Control, in substantially the form attached hereto as Appendix J, that is enforceable under state law; and (2) except with respect to Settling *De Minimis* State Agencies, a current title insurance

commitment or other evidence of title acceptable to EPA, which shows title to the land affected by the Proprietary Control 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 Performing Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

(iv) within 15 days of EPA's approval and acceptance of the Proprietary Control 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 Control with the appropriate land records office. Within 30 days of recording the Proprietary Control, such Settling Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Proprietary Control showing the clerk's recording stamps. If the Proprietary Control is to be conveyed to the United States, the Proprietary Control 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.

26. If the Site, or any other real property where access and/or land/water use restrictions are needed, is owned or controlled by persons other than any Settling Defendant, Settling Performing Defendants shall use best efforts to secure from such persons:

(a) an agreement to provide access thereto for the United States, the State and Settling Performing Defendants, and their representatives, contractors and subcontractors, to conduct any activity regarding the Consent Decree including, but not limited to, the activities listed in Paragraph 25(a);

(b) an agreement, enforceable by Settling Performing Defendants and the United States, to refrain from using 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 Materials 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 25(b); and

(c) (i) The execution and recordation in the appropriate land records office of Proprietary Controls, that (1) grant a right of access to conduct any activity regarding the Consent Decree including, but not limited to, those activities listed in Paragraph 25(a), and (2) grant the right to enforce the land/water use restrictions set forth in Paragraph 25(b), including, but not limited to, the specific restrictions listed therein and any land/water use restrictions listed in the ICIAP.

(ii) The Proprietary Controls shall be granted to one or more of the following persons, as determined by EPA: (1) the United States, on behalf of EPA, and its representatives, (2) the State and its representatives, (3) Settling Performing Defendants and their representatives, and/or (4) 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 Control without acquiring an interest in real property. If any Proprietary Controls are granted to any Settling Performing Defendants pursuant to this Paragraph 26(c)(ii)(3), then such Settling Performing Defendants shall monitor, maintain, report on, and enforce such Proprietary Controls.

(iii) In accordance with the schedule set forth in the ICIAP, Settling Performing Defendants shall submit to EPA for review and approval regarding such property: (1) a draft Proprietary Control, in substantially the form attached hereto as Appendix J, that is enforceable under state law; and (2) a current title insurance commitment, or other evidence of title acceptable to EPA, which shows title to the land affected by the Proprietary Control 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 Performing Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

(iv) Within 15 days of EPA's approval and acceptance of the Proprietary Control and the title evidence, Settling Performing Defendants shall 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, the Proprietary Control shall be recorded with the appropriate land records office. Within 30 days of the recording of the Proprietary Control, Settling Performing Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Proprietary Control showing the clerk's recording stamps. If the Proprietary Control is to be conveyed to the United States, the Proprietary Control and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111.

27. For purposes of Paragraphs 25 and 26, "best efforts" includes the payment of reasonable sums of money to obtain access, an agreement to restrict land/water use, a Proprietary

Control, and/or an agreement to release or subordinate a prior lien or encumbrance. If, within 30 days of the Effective Date, Settling Performing Defendants have not obtained agreements to provide access as required by Paragraph 26(a), Settling Performing Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Performing Defendants have taken to attempt to comply with Paragraph 26. If, in accordance with the schedule set forth in or established by the SOW, Settling Performing Defendants have not: a) obtained agreements to restrict land/water use or record Proprietary Controls, as required by Paragraph 26(b) or 26(c); or b) obtained, pursuant to Paragraph 25(c)(i) or 26(c)(i), agreement from the holders of prior liens or encumbrances to release or subordinate such liens or encumbrances to the Proprietary Controls, Settling Performing Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Performing Defendants have taken to attempt to comply with Paragraph 25 or 26. The United States may, as it deems appropriate, assist Settling Performing Defendants in obtaining access, agreements to restrict land/water use, Proprietary Controls, or the release or subordination of a prior lien or encumbrance. Settling Performing Defendants shall reimburse the United States under Section XVI (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.

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

29. 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.

X. REPORTING REQUIREMENTS

30. In addition to any other requirement of this Consent Decree, Settling Performing Defendants shall submit to EPA and the State, by electronic mail, monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Performing Defendants or their 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, which 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 or 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 Performing Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Performing Defendants shall submit these progress reports to EPA and the State by the tenth day of every month following the Effective Date of this Consent Decree until EPA

notifies Settling Performing Defendants pursuant to Paragraph 50(b) of Section XIV (Certification of Completion). If requested by EPA or the State, Settling Performing Defendants shall also provide briefings for EPA and the State to discuss the progress of the Work.

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

32. Upon the occurrence of any event during performance of the Work that Settling Performing Defendants are 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 Performing Defendants shall, within 24 hours of the knowledge 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 and Removal Branch, Region 4, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

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

34. Settling Performing Defendants shall submit five (5) written copies of all plans, reports, data, and other deliverables required by the SOW, the Remedial Design Work Plans, the Remedial Action Work Plans, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Performing Defendants shall simultaneously submit two (2) written copies of all such plans, reports, data, and other deliverables to the State. Upon request by EPA or the State, Settling Performing Defendants shall submit in electronic form all or any portion of any deliverables Settling Performing Defendants are required to submit pursuant to the provisions of this Consent Decree.

35. All deliverables submitted by Settling Performing Defendants to EPA which purport to document Settling Performing Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of Settling Performing Defendants.

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

36. 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: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.

(b) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) 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.

37. Resubmissions. Upon receipt of a notice of disapproval under Paragraph 36(a)(iii) or (iv), or if required by a notice of approval upon specified conditions under Paragraph 36(a)(ii), Settling Performing Defendants 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 may: (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 Performing Defendants to correct the deficiencies; or (e) any combination of the foregoing.

38. 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 36(b)(ii) or 37 due to such material defect, then the material defect shall constitute a lack of compliance for purposes of Paragraph 82. The provisions of Section XX (Dispute Resolution) and Section XXI (Stipulated Penalties) shall govern the accrual and payment of any stipulated penalties regarding Settling Performing Defendants' submissions under this Section.

39. Implementation. Upon approval, approval upon conditions, or modification by EPA under Paragraph 36 or 37, of any plan, report, or other deliverable, or any portion thereof: (a) such plan, report, or other deliverable, or portion thereof, shall be incorporated into and enforceable under this Consent Decree; and (b) Settling Performing Defendants 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 XX (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 36 or 37 shall not

relieve Settling Performing Defendants of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

XII. PROJECT COORDINATORS

40. Within 20 days of lodging this Consent Decree, Settling Performing Defendants, the State and EPA will notify each other, in writing, of the name, address, and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other parties at least five working days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. Settling Performing Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Settling Performing Defendants' Project Coordinator shall not be an attorney for any Settling Performing Defendant in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

41. 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.

42. EPA's Project Coordinator and Settling Performing Defendants' Project Coordinator will meet periodically, as determined by EPA, and these meetings, at the approval of EPA, may be held by telephone.

XIII. PERFORMANCE GUARANTEE

43. In order to ensure the full and final completion of the Work, Settling Performing Defendants shall establish and maintain a performance guarantee, initially in the amount of $7,300,000.00, for the benefit of EPA (hereinafter "Estimated Cost of the Work"). The performance guarantee, which must be satisfactory in form and substance to EPA, shall be in the form of one or more of the following mechanisms (provided that, if Settling Performing Defendants intend to use multiple mechanisms, such multiple mechanisms shall be limited to surety bonds guaranteeing payment, letters of credit, trust funds, escrow accounts, and insurance policies):

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

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

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

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

(e) A demonstration by one or more Settling Performing Defendants that each such Settling Performing Defendant meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work (plus the amount(s) of any other federal or any state environmental obligations 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;

(f) A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of a Settling Performing Defendant, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with at least one Settling Performing 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 federal or any state environmental obligations financially assured through the use of a financial test or guarantee) that it proposes to guarantee hereunder; or

(g) An escrow account that provides EPA security and rights equivalent to those provided by a trust fund that meets the requirements of 40 C.F.R. § 264.151(a)(1) to finance the Work in accordance with this Consent Decree, the ROD, and the SOW. The escrow account

shall provide that the funds placed therein are specifically and irrevocably reserved for the Work. Settling Performing Defendants shall include in each written monthly progress report submitted pursuant to Section X of this Consent Decree (Reporting Requirements) a report on the status of payments out of the escrow account. At EPA's request, Settling Performing Defendants shall make available to EPA and the State any financial reports or other similar documents prepared by the escrow agent or other person responsible for approving payments out of the escrow account. Upon the issuance of the Certification of Completion of Work, pursuant to Paragraph 50, any funds remaining in the escrow account may be disbursed to Settling Performing Defendants.

44. Settling Performing Defendants have selected, and EPA has found satisfactory, as an initial performance guarantee, the combination of an escrow account funded by multiple Settling Performing Defendants pursuant to Paragraph 43(g), and individual Settling Performing Defendants' surety bonds, irrevocable letters of credit, and insurance policies pursuant to Paragraphs 43(a), (b), and (d), all in the forms attached hereto as Appendix I. The escrow account portion of this initial performance guarantee provided by Settling Performing Defendants pursuant to this Section may be disbursed to pay for the Work, while the surety bonds, irrevocable letters of credit, and insurance policies may be reduced in accordance with Paragraph 48 as the work is performed. Within 10 days after the Effective Date, Settling Performing Defendants shall execute or otherwise finalize all instruments or other documents required in order to make the selected performance guarantees legally binding in a form substantially identical to the documents attached as Appendix I, and such performance guarantees shall thereupon be fully effective. Within 30 days of the Effective Date, Settling Performing Defendants 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 in

accordance with Section XXVIII (Notices and Submissions), with a copy to the United States and EPA, and the State as specified in Section XXVIII (Notices and Submissions).

45. If, at any time after the Effective Date and before issuance of the Certification of Completion of the Work pursuant to Paragraph 50, Settling Performing Defendants provide a performance guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 43(e) or 43(f), the relevant Settling Performing Defendants 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://www.epa.gov/compliance/resources/policies/cleanup/superfund/fa-test-samples.pdf; (b) the annual re-submission 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 XIII, 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 each Settling Performing Defendant making a demonstration under Paragraph 43(e); and the terms "facility" and "hazardous waste facility" shall be deemed to include the Site.

46. In the event that EPA determines at any time that a performance guarantee provided by any Settling Performing Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that any Settling Performing 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 Performing Defendants, within 30 days of receipt of notice of EPA's determination or, as the case may be, within 30 days of any Settling Performing 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 43 that satisfies all requirements set forth in this Section XIII; provided, however, that if any Settling Performing Defendant cannot obtain such revised or alternative form of performance guarantee within such 30-day period, and provided further that the Settling Performing 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 the Settling Performing Defendant in the exercise of due diligence to obtain such revised or alternative form of performance guarantee, such additional period not to exceed 30 days. In seeking approval for a revised or alternative form of performance guarantee, Settling Performing Defendants shall follow the procedures set forth in Paragraph 48(b)(i). Settling Performing Defendants' inability to post a performance guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Settling Performing Defendants to complete the Work in strict accordance with the terms of this Consent Decree.

47. Funding for Work Takeover. The commencement of any Work Takeover pursuant to Paragraph 99 shall trigger EPA's right to receive the benefit of any performance guarantee(s) provided pursuant to Paragraphs 43(a), 43(b), 43(c), 43(d), 43(f), or 43(g), 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 43(e) or Paragraph 43(f)(ii), Settling Performing Defendants (or in the case of Paragraph 43(f)(ii), 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 Performing Defendants provide a substitute performance guarantee mechanism in accordance with this Section XIII 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 XVI (Payments for Response Costs).

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

(a) Reduction of Amount of Performance Guarantee. If Settling Performing Defendants believe that the estimated cost of completing the Work has diminished below the amount set forth in Paragraph 43, Settling Performing Defendants 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 Performing Defendants 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 Performing Defendants shall follow the procedures set forth in Paragraph 48(b)(ii) for requesting a revised or alternative form of performance guarantee, except as specifically provided in this Paragraph 48(a). If EPA decides to accept Settling Performing Defendants' proposal for a reduction in the amount of the performance guarantee, either to the amount set forth in Settling Performing Defendants' written proposal or to some other amount as selected by EPA, EPA will notify the petitioning Settling Performing Defendants 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 Performing Defendants 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 48(b)(ii). In the event of a dispute, Settling Performing Defendants 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 XX (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 46 or 48(b).

(b) Change of Form of Performance Guarantee.

(i) If, after the Effective Date, Settling Performing Defendants desire to change the form or terms of any performance guarantee(s) provided pursuant to this Section, Settling Performing Defendants 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 48(b)(ii). 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 Performing Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

(ii) Settling Performing Defendants shall submit a written proposal for a revised or alternative performance guarantee to EPA which 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 Performing Defendants shall submit such proposed revised or alternative performance guarantee to the EPA Regional Financial Management Officer in accordance with Section XXVIII (Notices and

Submissions). EPA will notify Settling Performing Defendants in writing of its decision to accept or reject a revised or alternative performance guarantee submitted pursuant to this Paragraph. Within 10 days after receiving a written decision approving the proposed revised or alternative performance guarantee, Settling Performing Defendants shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected performance guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such performance guarantee(s) shall thereupon be fully effective. Settling Performing Defendants 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 30 days of receiving a written decision approving the proposed revised or alternative performance guarantee in accordance with Section XXVIII (Notices and Submissions), with a copy to the United States and EPA and the State as specified in Section XXVIII.

(c) Release of Performance Guarantee. Settling Performing Defendants shall not release, cancel, or discontinue any performance guarantee provided pursuant to this Section except as provided in this Paragraph. If Settling Performing Defendants receive written notice from EPA in accordance with Paragraph 50 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 Performing Defendants in writing, Settling Performing Defendants may thereafter release, cancel, or discontinue the performance guarantee(s) provided pursuant to this Section. In the event of a dispute, Settling Performing Defendants may release, cancel, or discontinue the performance

guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XX (Dispute Resolution).

XIV. CERTIFICATION OF COMPLETION

49. Completion of the Remedial Action.

(a) Within 90 days after Settling Performing Defendants conclude that both the soil and groundwater components of the Remedial Action has been fully performed and the Performance Standards have been achieved, Settling Performing Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Performing Defendants, EPA, and the State. If, after the pre-certification inspection, Settling Performing Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been achieved, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, a registered professional engineer and Settling Performing Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Performing Defendant or Settling Performing Defendants' 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 completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Performing Defendants in writing of the activities that must be undertaken by Settling Performing Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards, provided, however, that EPA may only require Settling Performing Defendants 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 13(a). 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 Performing Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Performing Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

(b) If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion of the Remedial Action and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in

writing to Settling Performing Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXII (Covenants by Plaintiffs). Certification of Completion of the Remedial Action shall not affect Settling Performing Defendants' remaining obligations under this Consent Decree.

50. Completion of the Work.

(a) Within 90 days after Settling Performing Defendants conclude that all phases of the Work, other than any remaining activities required under Section VII (Remedy Review), have been fully performed, Settling Performing Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Performing Defendants, EPA, and the State. If, after the pre-certification inspection, Settling Performing Defendants still believe that the Work has been fully performed, Settling Performing Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the statement set forth in Paragraph 49(a), signed by a responsible corporate official of a Settling Performing Defendant or Settling Performing Defendants' Project Coordinator. 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 Performing Defendants in writing of the activities that must be undertaken by Settling Performing Defendants pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require Settling Performing Defendants 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 13(a). 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 Performing Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Performing Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

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

XV. EMERGENCY RESPONSE

51. If any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Performing Defendants shall, subject to Paragraph 52, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, Settling Performing Defendants shall notify the EPA Emergency Response Unit, Region 4. Settling Performing Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Performing Defendants fail to take appropriate response action as required by this Section, and EPA, or, as appropriate, the State, takes such action instead, Settling Performing Defendants

shall reimburse EPA and the State for all costs of the response action under Section XVI (Payments for Response Costs).

52. Subject to Section XXII (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.

XVI. PAYMENTS FOR RESPONSE COSTS

53. Payment of Past Response Costs and State Past Response Costs by Settling Performing Defendants.

(a) Payment to EPA for Past Response Costs. Settling Performing Defendants shall have no obligation to pay to the United States any additional Past Response Costs.

(b) Payment to the State for State Past Response Costs. Within 30 days of the Effective Date, Settling Performing Defendants shall pay to the State $576,011.71, in accordance with instructions provided by the State.

54. Payment of Future Response Costs and State Future Response Costs by Settling Performing Defendants.

(a) Payment to EPA. Settling Performing Defendants shall pay to EPA all Future Response Costs not inconsistent with the NCP. Settling Performing Defendants shall have a credit in the amount of $264,436.92 that shall be applied toward payment of Future Oversight Costs. On a periodic basis, EPA will send Settling Performing Defendants a bill requiring payment

that includes a Superfund Cost Recovery Package Imaging and On-Line System ("SCORPIOS") Report and a U.S. Department of Justice ("DOJ") case cost summary. Settling Performing Defendants shall make all payments within 30 days of Settling Performing Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 59, in accordance with Paragraphs 58(b) and 58(c) (Payment Instructions). The total amount to be paid by Settling Performing Defendants pursuant to Paragraph 54(a) shall be deposited by EPA in the AER Special Account.

(b) Payment to the State. Settling Performing Defendants shall pay to the State all State Future Response Costs not inconsistent with the NCP in accordance with instructions provided by the State.

55. Payments by Settling Federal Agencies.

(a) Payment to EPA. As soon as reasonably practicable after the Effective Date, the United States Postal Service, the Army Air Force Exchange Service, and the United States, on behalf of Settling *De Minimis* Federal Agencies other than the United States Postal Service and the Army Air Force Exchange Service, shall pay to EPA the amounts specified in Appendix D-2, and the Army Air Force Exchange Service shall pay to EPA $783.66, $109.14 of which is attributable to Past Response Costs, and $674.52 of which is attributable to Future Response Costs. Of the total amount to be paid on behalf of Settling *De Minimis* Federal Agencies pursuant to this Paragraph, the amounts attributable to Past Response Costs shall be deposited by EPA in the EPA Hazardous Substance Superfund and the amounts attributable to Future Response Costs shall be deposited by EPA in the AER Special Account.

(b) Payment for State Past Response Costs. As soon as reasonably practicable after the Effective Date, the United States Postal Service, the Army Air Force Exchange Service,

and the United States, on behalf of Settling *De Minimis* Federal Agencies other than the United States Postal Service and the Army Air Force Exchange Service, shall pay to Settling Performing Defendants the amounts specified in Appendix D-2, and the Army Air Force Exchange Service shall pay to Settling Performing Defendants $24.27, for State Past Response Costs in accordance with instructions provided by Settling Performing Defendants.

(c) Payment by Settling Non-Performing Federal Agencies to Settling Performing Defendants for Past Costs. The United States, on behalf of the Settling Non-Performing Federal Agencies, shall pay $52,904.86 to the Settling Performing Defendants as soon as reasonably practicable as the United States' share of: (i) Past Response Costs; and (ii) recoverable costs under Section 107 of CERCLA, 42 U.S.C. § 9607, incurred by the Settling Performing Defendants prior to the Effective Date.

(d) Payment by Settling Non-Performing Federal Agencies to Settling Performing Defendants for Future Costs. Subject to the dispute resolution provisions set forth in Paragraph 55(e) below, the United States, on behalf of the Settling Non-Performing Federal Agencies, will pay to the Settling Performing Defendants the Settling Non-Performing Federal Agencies' allocated share, calculated to be 2.5487 %, of costs incurred by the Settling Performing Defendants for the Work, Future Response Costs, and State Future Response Costs, as well as State Past Response Costs at the Site. After the Effective Date, the Settling Performing Defendants may submit claims for reimbursement ("Invoice") to the Section Chief of the Environmental Defense Section of the Environment and Natural Resources Division of the United States Department of Justice no more frequently than every six months. The Settling Performing Defendants will include with each Invoice a statement of Future Costs incurred by Settling Performing Defendants during the period covered by the Invoice as well as a statement of any

proceeds received by the Settling Performing Defendants from the AER Disbursement Special Account, sufficient documentation to allow verification of the accuracy of the costs claimed, proof of payment of all of the Future Costs included in the Invoice, and a statement that such costs were properly incurred and consistent with Section 107(a)(4)(B) of CERCLA, 42 U.S.C. § 9607(a)(4)(B), the Site Record of Decision, and this Consent Decree. In the event that any Settling Performing Defendant ceases to pay its allocated share on the basis of its filing for bankruptcy protection, the Settling Performing Defendants shall notify the United States and shall, on an interim basis and without prejudice to any enforcement and/or collection actions, allocate said bankrupt Settling Performing Defendant's allocated share among all other Settling Performing Defendants and the Settling Non-Performing Federal Agencies in accordance with the weighted volumetric formula. The Settling Performing Defendants and the Settling Non-Performing Federal Agencies agree that any funds recovered from a bankrupt Settling Performing Defendant will be distributed among all other Settling Performing Defendants and the Settling Non-Performing Federal Agencies in accordance with the weighted volumetric formula.

(e) Resolution of Disputes Between Settling Non-Performing Federal Agencies and Settling Performing Defendants for Future Costs. Upon receipt of any Invoice, the United States, on behalf of the Settling Non-Performing Federal Agencies, shall then have sixty (60) days to review the Invoice and make payment in whole or in part. Within sixty (60) days of receipt of the Invoice and accompanying documentation, the United States may in good faith object, in writing, and said objection shall be sent to the Settling Performing Defendants pursuant to Paragraph 131. Any such objection shall identify the contested costs and the basis for objection. In the event of an objection, the United States shall, within sixty (60) days of transmitting the objection, reimburse the Settling Performing Defendants for the Settling Non-Performing Federal

Agencies' share of any uncontested Invoice or uncontested costs that are identified on an Invoice. In the event the United States objects to any Invoice, Settling Performing Defendants and the United States agree to participate in good faith, informal negotiations to resolve the dispute. The period for informal negotiations shall last sixty (60) days from the date the United States transmits its written objection pursuant to Paragraph 131, and may be extended upon the mutual consent of Settling Performing Defendants and the United States. If informal negotiations are unsuccessful, Settling Performing Defendants and the United States reserve their rights to submit the dispute to non-binding mediation or to the Court to resolve the matter. The reasonable costs and expenses of mediation shall be borne equally by the parties involved in the dispute, and each party shall bear its own attorneys' fees, expert fees, and other costs of its participation in such mediation. Paragraph 59 and Section XX (Dispute Resolution) of this Consent Decree do not apply to disputes raised pursuant to this Paragraph. Any such dispute shall not excuse performance by the Settling Performing Defendants and Settling Non-Performing Federal Agencies of their obligations under this Consent Decree.

(f) Interest. In the event that any payment required by Paragraphs 55(a), 55(b), or 55(c) is not made within 120 days of the Effective Date, interest on the unpaid balance shall be paid at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the 121st day after the Effective Date and accruing through the date of the payment. If the United States does not object to an Invoice or certain costs identified in an Invoice within sixty (60) days of receipt of said Invoice pursuant to Paragraph 55(e) above, then payment is due to Settling Performing Defendants within one hundred twenty (120) days after receipt of the Invoice. If such payment of an uncontested Invoice or uncontested costs is not made in full within one hundred twenty (120) days after receipt of the Invoice, then interest on the unpaid balance for

uncontested costs shall accrue commencing on the 121st day at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). In the event the United States objects to an Invoice or certain costs identified in an Invoice pursuant to Paragraph 55(e) above, if the dispute is not resolved such that payment is made in full within one hundred twenty (120) days after receipt of the Invoice, then interest on the unpaid balance for contested costs shall accrue commencing on the 121st day at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). If the United States prevails as to any disputed costs, the United States will not pay the contested costs or any interest accrued thereon.

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

57. Payments by Settling *De Minimis* Defendants and Settling *De Minimis* State Agencies.

(a) Payment to EPA. Within 60 days of the Effective Date, (i) Settling *De Minimis* Defendants, with the exception of W.R. Grace & Co., shall pay to EPA one combined payment in the amount equal to the total amounts due to EPA by each signatory Settling *De Minimis* Defendant, as specified in Appendix C, and (ii) the State of Georgia, on behalf of Settling *De Minimis* State Agencies, shall pay the amount specified in Appendix E. Payment shall be made in accordance with Paragraphs 58(a) and 58(c) (Payment Instructions). Of the total amount to be paid by Settling *De Minimis*

Defendants and Settling *De Minimis* State Agencies pursuant to this Paragraph, the amounts attributable to Past Response Costs shall be deposited in the EPA Hazardous Substance Superfund and the amounts attributable to Future Response Costs shall be deposited by EPA in the AER Special Account.

(b) Payment for State Past Response Costs. Within 60 days of the Effective Date, (i) Settling *De Minimis* Defendants, with the exception of W.R. Grace & Co., shall pay to the Settling Performing Defendants one combined payment in the amount equal to the total amounts due to the State by each signatory Settling *De Minimis* Defendant, as specified in Appendix C, and (ii) the State of Georgia, on behalf of Settling *De Minimis* State Agencies, shall pay to the State the amount specified in Appendix E for State Past Response Costs in accordance with instructions provided by the Settling Performing Defendants.

(c) Payments by W.R. Grace & Co. W.R. Grace & Co. and certain of its affiliates ("Grace") has filed a petition for reorganization under chapter 11 of the U.S. Bankruptcy Code. On January 31, 2011, the Bankruptcy Court entered an order confirming Grace's chapter 11 plan of reorganization. The confirmation order is currently before a U.S. district court for affirmance. Pursuant to this Paragraph 57, EPA and the State shall have an allowed pre-petition non-priority claim against Grace's chapter 11 estate in the amount set forth in Appendix C. Within 30 days of the effective date of Grace's chapter 11 plan, Grace shall pay to EPA one payment in the total amount due to EPA as specified in Appendix C. Of the total amount to be paid by Grace pursuant to this Paragraph, the amount attributable to Past Response Costs shall be deposited in the EPA Hazardous Substance Superfund and the amount attributable to Future Response Costs shall be deposited by EPA in the AER Special Account. In addition, within 30 days of the effective date of Grace's chapter 11 plan, Grace shall pay to Settling Performing Defendants one payment in the

total amount due to the State as specified in Appendix C for State Past Response Costs in accordance with instructions provided by Settling Performing Defendants.

58. Payment Instructions for Settling Defendants.

(a) Instructions for Past Response Costs Payments. All payments required, elsewhere in this Consent Decree, to be made in accordance with this Paragraph 58(a) shall be made at https://www.pay.gov to the DOJ account, in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Southern District of Georgia, Augusta Division, after the Effective Date. The payment instructions provided by the Financial Litigation Unit shall include a Consolidated Debt Collection System ("CDCS") number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU shall provide the payment instructions to the representatives identified in Section XXVIII of this Consent Decree on behalf of Settling Defendants. Settling Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change in accordance with Section XXVIII (Notices and Submissions).

(b) Instructions for Future Response Costs Payments and Stipulated Penalties. All payments required, elsewhere in this Consent Decree, to be made in accordance with this Paragraph 58(b) shall be made by Fedwire EFT to:

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"

(c) Instructions for All Payments. All payments made under Paragraph 58(a) or 58(b) shall reference the CDCS Number, EPA Site/Spill ID Number A4GG and DOJ Case Number 90-11-3-10081. At the time of any payment required to be made in accordance with Paragraphs 58(a) or 58(b), Settling Defendants shall send notice that payment has been made to the United States, and to EPA, in accordance with Section XXVIII (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) Special Accounts. Any funds deposited by EPA in the AER Special Account established pursuant to this Section may be used to conduct or finance response actions at or in connection with the Site, or may be transferred by EPA to the EPA Hazardous Substance Superfund.

59. Settling Performing Defendants may contest any Future Response Costs billed under Paragraph 54 if they determine that EPA or the State has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe

EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or the State (if the State's accounting is being disputed) pursuant to Section XXVIII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Settling Performing Defendants shall pay all uncontested Future Response Costs to the United States or the State within 30 days of Settling Performing Defendants' receipt of the bill requiring payment. Simultaneously, Settling Performing Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Georgia and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Settling Performing Defendants shall send to the United States, as provided in Section XXVIII (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 Performing Defendants shall initiate the Dispute Resolution procedures in Section XX (Dispute Resolution). If the United States or the State prevails in the dispute, Settling Performing Defendants shall pay the sums due (with accrued interest) to the United States or the State, if State costs are disputed, within five (5) days of the resolution of the dispute. If Settling Performing Defendants prevail concerning any aspect of the contested costs, Settling Performing Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail

to the United States or the State, if State costs are disputed, within five days of the resolution of the dispute. Settling Performing Defendants shall be disbursed any balance of the escrow account. All payments to the United States under this Paragraph shall be made in accordance with Paragraphs 58(b) and 58(c) (Payment Instructions). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Performing Defendants' obligation to reimburse the United States and the State for their Future Response Costs.

60. Interest. Settling Performing Defendants, Settling *De Minimis* Defendants with the exception of W.R. Grace & Co., and Settling *De Minimis* State Agencies shall make payments to EPA and the State in accordance with Section XVI of this Consent Decree. In the event that any payment for Past Response Costs or for Future Response Costs required under this Section is not made by the date required, the group of Settling Defendants that is delinquent in making payment shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs and State Past Response Costs under this Paragraph shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 83.

XVII. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS

61. Creation of AER Disbursement Special Account and Agreement to Disburse Funds to Settling Performing Defendants. Within 60 days after the Effective Date, EPA shall establish the AER Disbursement Special Account and shall transfer from the AER Special Account to the

AER Disbursement Special Account those proceeds EPA receives from the Settling *De Minimis* Parties, less all payments that are attributable to Past Response Costs and less $264,436.92. Subject to the terms and conditions set forth in this Section, EPA agrees to make the funds in the AER Disbursement Special Account, including Interest Earned on the funds in the AER Disbursement Special Account, available for disbursement to Settling Performing Defendants as partial reimbursement for performance of the Work under this Consent Decree. EPA shall disburse funds from the AER Disbursement Special Account to Settling Performing Defendants in accordance with the procedures and milestones for phased disbursement set forth in this Section.

62. Timing, Amount, and Method of Disbursing Funds From the AER Disbursement Special Account. Within 60 days of EPA's receipt of a Cost Summary and Certification, as defined by Paragraph 63(b), or if EPA has requested additional information under Paragraph 63(b) or a revised Cost Summary and Certification under Paragraph 63(c), within 60 days of receipt of the additional information or revised Cost Summary and Certification, and subject to the conditions set forth in this Section, EPA shall disburse the funds from the AER Disbursement Special Account at the completion of the following milestones, and in the amounts set forth below.

Milestone	Disbursement of Funds
1. Completion of the remediation of contaminated soils.	Settling Performing Defendants may receive 50 percent of the proceeds from the AER Disbursement Special Account upon achieving this milestone. However, if Settling Performing Defendants can demonstrate that they have incurred costs in excess of $6,286,996 pursuant to Paragraph 63, Settling Performing Defendants may receive 100 percent of the proceeds from the AER Disbursement Special Account.
2. Completion of one round of in-situ enhanced reductive dechlorination injections under the groundwater remedial action.	Settling Performing Defendants may receive any remaining portion of the proceeds from the AER Disbursement Special Account upon achieving this milestone.

EPA shall disburse the funds from the AER Disbursement Special Account to Settling Performing Defendants through the Settling Performing Defendants' counsel, in accordance with Section XXVIII (Notices and Submissions).

63. Requests for Disbursement of Special Account Funds.

(a) Within 60 days of issuance of EPA's written confirmation that a milestone of the Work, as defined in Paragraph 62, has been satisfactorily completed, Settling Performing Defendants shall submit to EPA a Cost Summary and Certification, as defined in Paragraph 63(b), covering the Work performed pursuant to this Consent Decree up to the date of completion of that milestone. Settling Performing Defendants shall not include in any submission costs included in a

previous Cost Summary and Certification following completion of an earlier milestone of the Work if those costs have been previously sought or reimbursed pursuant to Paragraph 62.

(b) Each Cost Summary and Certification shall include a complete and accurate written cost summary and certification of the necessary costs incurred and paid by Settling Performing Defendants for the Work covered by the particular submission, excluding costs not eligible for disbursement under Paragraph 64. Each Cost Summary and Certification shall contain the following statement signed by the Chief Financial Officer of a Settling Performing Defendant or an Independent Certified Public Accountant:

To the best of my knowledge, after thorough investigation and review of Settling Performing Defendants' documentation of costs incurred and paid for Work performed pursuant to this Consent Decree [insert, as appropriate: "up to the date of completion of milestone 1," "between the date of completion of milestone 1 and the date of completion of milestone 2,"] I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment.

The Chief Financial Officer of a Settling Performing Defendant or Independent Certified Public Accountant shall also provide EPA a list of the documents that he or she reviewed in support of the Cost Summary and Certification. Upon request by EPA, Settling Performing Defendants shall submit to EPA any additional information that EPA deems necessary for its review and approval of a Cost Summary and Certification.

(c) If EPA finds that a Cost Summary and Certification includes a mathematical error, costs excluded under Paragraph 64, costs that are inadequately documented, or costs submitted in a prior Cost Summary and Certification, it will notify Settling Performing Defendants

and provide them an opportunity to cure the deficiency by submitting a revised Cost Summary and Certification. If Settling Performing Defendants fail to cure the deficiency within 30 days after being notified of, and given the opportunity to cure, the deficiency, EPA will recalculate Settling Performing Defendants' costs eligible for disbursement for that submission and disburse the corrected amount to Settling Performing Defendants in accordance with the procedures in Paragraph 64 of this Section. Settling Performing Defendants may dispute EPA's recalculation under this Paragraph pursuant to Section XX (Dispute Resolution). In no event shall Settling Performing Defendants be disbursed funds from the AER Disbursement Special Account in excess of amounts properly documented in a Cost Summary and Certification accepted or modified by EPA.

64. Costs Excluded from Disbursement. The following costs are excluded from, and shall not be sought by Settling Performing Defendants for, disbursement from the AER Disbursement Special Account: (a) response costs paid pursuant to Section XVI (Payments for Response Costs); (b) any other payments made by Settling Performing Defendants to the United States pursuant to this Consent Decree, including, but not limited to, any interest or stipulated penalties paid pursuant to Section XXI (Stipulated Penalties); (c) attorneys' fees and costs, except for reasonable attorneys' fees and costs necessarily related to obtaining access or institutional controls as required by Section IX (Access and Institutional Controls); (d) costs of any response activities Settling Performing Defendants perform that are not required under, or approved by EPA pursuant to, this Consent Decree; (e) costs related to Settling Performing Defendants' litigation, settlement, development of potential contribution claims, or identification of defendants; (f) internal costs of Settling Performing Defendants, including but not limited to, salaries, travel, or in-kind services, except for those costs that represent the work of employees of Settling Performing

Defendants directly performing the Work; (g) any costs incurred by Settling Performing Defendants prior to the Effective Date; or (h) any costs incurred by Settling Performing Defendants pursuant to Section XX (Dispute Resolution).

65. Termination of Disbursements from the Special Account. EPA's obligation to disburse funds from the AER Disbursement Special Account under this Consent Decree shall terminate upon EPA's determination that Settling Performing Defendants: (a) have knowingly submitted a materially false or misleading Cost Summary and Certification; (b) have submitted a materially inaccurate or incomplete Cost Summary and Certification, and have failed to correct the materially inaccurate or incomplete Cost Summary and Certification within 30 days after being notified of, and given the opportunity to cure, the deficiency; or (c) failed to submit a Cost Summary and Certification as required by Paragraph 63 within 30 days (or such longer period as EPA agrees) after being notified that EPA intends to terminate its obligation to make disbursements pursuant to this Section because of Settling Performing Defendants' failure to submit the Cost Summary and Certification as required by Paragraph 63. EPA's obligation to disburse funds from the AER Disbursement Special Account shall also terminate upon EPA's assumption of performance of any portion of the Work pursuant to Paragraph 99, when such assumption of performance of the Work is not challenged by Settling Performing Defendants or, if challenged, is upheld under Section XX (Dispute Resolution). Settling Performing Defendants may dispute EPA's termination of special account disbursements under Section XX (Dispute Resolution).

66. Recapture of Special Account Disbursements. Upon termination of disbursements from the AER Disbursement Special Account under Paragraph 65, if EPA has previously disbursed funds from the AER Disbursement Special Account for activities specifically related to the reason

for termination, e.g., discovery of a materially false or misleading submission after disbursement of funds based on that submission, EPA shall submit a bill to Settling Performing Defendants for those amounts already disbursed from the AER Disbursement Special Account specifically related to the reason for termination, plus Interest on that amount covering the period from the date of disbursement of the funds by EPA to the date of repayment of the funds by Settling Performing Defendants. Within 30 days of receipt of EPA's bill, Settling Performing Defendants shall reimburse the Hazardous Substance Superfund for the total amount billed. Payment shall be made in accordance with Paragraphs 58(b) and 58(c). Upon receipt of payment, EPA may deposit all or any portion thereof in the AER Special Account, the AER Disbursement Special Account, or the Hazardous Substance Superfund. The determination of where to deposit or how to use the funds shall not be subject to challenge by Settling Performing Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum. Settling Performing Defendants may dispute EPA's determination as to recapture of funds pursuant to Section XX (Dispute Resolution).

67. Balance of Special Account Funds. After the Remedial Action has been performed in accordance with this Consent Decree and the Performance Standards have been achieved, and after EPA completes all disbursement to Settling Performing Defendants in accordance with this Section, if any funds remain in the AER Disbursement Special Account, EPA may transfer such funds to the AER Special Account or to the Hazardous Substance Superfund. Any transfer of funds to the AER Special Account or the Hazardous Substance Superfund shall not be subject to challenge by Settling Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

XVIII. INDEMNIFICATION AND INSURANCE

68. Settling Performing Defendants' 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 Performing Defendants as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Settling Performing Defendants, except the South Carolina Department of Transportation, shall indemnify, save and hold harmless the United States, the State, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Performing Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Performing Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, Settling Performing Defendants agree 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 Performing Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. 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 Performing Defendants in carrying out activities pursuant to this Consent Decree. Neither Settling Performing Defendants nor any such contractor shall be considered an agent of the United States or the State.

(b) The United States and the State shall give Settling Performing Defendants notice of any claim for which the United States or the State plans to seek indemnification pursuant to Paragraph 68, and shall consult with Settling Performing Defendants prior to settling such claim.

69. Settling Defendants covenant not to sue and agree 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 any one or more of Settling Performing Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Performing Defendants, except the South Carolina Department of Transportation, 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 any one or more of Settling Performing Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

70. No later than 15 days before commencing any on-Site Work, Settling Performing Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 49(b) of Section XIV (Certification of Completion) commercial general liability insurance with limits of $2,000,000.00, for any one occurrence, and automobile liability insurance with limits of $2,000,000.00, combined single limit, naming the United States and the State as additional insureds with respect to all liability arising out of the activities performed by or on behalf of Settling Performing Defendants pursuant to this Consent Decree. In addition, for the duration of this Consent Decree, Settling Performing Defendants shall satisfy, or shall ensure that their 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 Performing Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Performing Defendants shall provide to EPA and the State certificates of such insurance and a copy of each insurance policy. Settling Performing Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Performing Defendants demonstrate 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 Performing Defendants need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. The Settling Performing Defendants 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 applicable insurance amount.

XIX. FORCE MAJEURE

71. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Settling Performing Defendants, of any entity controlled by Settling Performing Defendants, or of Settling Performing Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Performing Defendants' best efforts to fulfill the obligation. The requirement that Settling Performing Defendants 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 (1) as it is occurring and (2) 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.

72. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree for which Settling Performing Defendants intend or may intend to assert a claim of force majeure, Settling Performing Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 4, within 10 days of when Settling Performing Defendants first knew that the event might cause a delay. Within 10 days thereafter, Settling Performing Defendants 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 Performing Defendants' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Settling Performing Defendants, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Settling Performing Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Settling Performing Defendants shall be deemed to know of any circumstance of which Settling Performing Defendants, any entity controlled by Settling Performing Defendants, or Settling Performing Defendants' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Settling Performing Defendants 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 71 and

whether Settling Performing Defendants have exercised their best efforts under Paragraph 71, EPA may, in its unreviewable discretion, excuse in writing Settling Performing Defendants' failure to submit timely notices under this Paragraph.

73. 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 Performing Defendants 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 Performing Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

74. If Settling Performing Defendants elect to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Performing Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, 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 Performing Defendants complied with the requirements of Paragraphs 71 and 72. If Settling Performing Defendants carry this burden, the delay at issue shall

be deemed not to be a violation by Settling Performing Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XX. DISPUTE RESOLUTION

75. 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 Defendants that have not been disputed in accordance with this Section.

76. 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.

77. 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 30 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States 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 Defendants. The Statement of Position shall specify Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 78 or Paragraph 79.

(b) Within 30 days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 78 or Paragraph 79. Within 15 days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

(c) If there is disagreement between EPA and Settling Defendants as to whether dispute resolution should proceed under Paragraph 78 or Paragraph 79, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 78 and 79.

78. 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 Defendants regarding the validity of the ROD's provisions.

(a) An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to

this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

(b) The Director of the Superfund Division, EPA Region 4, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 78(a). This decision shall be binding upon Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraphs 78(c) and 78(d).

(c) Any administrative decision made by EPA pursuant to Paragraph 80(b). shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

(d) In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the 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 78(a).

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

(a) Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 77, 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 Defendants unless, within 10 days of receipt of the decision, Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

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

80. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 89. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties).

81. Disputes solely between the State and Settling Defendants. Disputes arising under the Consent Decree between the State and Settling Defendants shall be governed in the following manner: the procedures for resolving the disputes mentioned in this Paragraph shall be the same as provided in Paragraphs 75-80, except that each reference to EPA shall read as a reference to GA EPD, each reference to the Director of the Superfund Division, EPA Region 4, shall be read as a reference to the Director of GA EPD, and each reference to the United States shall be read as a reference to the State.

XXI. STIPULATED PENALTIES

82. Settling Performing Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 83 and 84 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XIX (Force Majeure). "Compliance" by Settling Performing Defendants shall include 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.

83. Stipulated Penalty Amounts - Work (Including Payments and Excluding Plans, Reports, and Other Deliverables).

(a) The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 83(b):

Penalty Per Violation Per Day	Period of Noncompliance
$ 1,000.00	1st through 14th day
$ 2,500.00	15th through 30th day
$ 5,000.00	31st day and beyond

(b) Compliance Milestones.

(i) Failure to implement the EPA-approved Soil Remedial Design Work Plan in accordance with the SOW and the approved schedule therein;

(ii) Failure to implement the EPA-approved Groundwater Remedial Design Work Plan in accordance with the SOW and the approved schedule therein;

(iii) Failure to implement the EPA-approved Soil Remedial Action Work Plan in accordance with the SOW and the approved schedule contained therein;

(iv) Failure to implement the EPA-approved Groundwater Remedial Action Work Plan in accordance with the SOW and the approved schedule contained therein;

(v) Failure to complete the Remedial Action required under this Consent Decree, the ROD, and SOW;

(vi) Failure to establish and maintain the Performance Guarantee(s) as required by Section XIII of this Consent Decree;

(vii) Failure to procure and maintain comprehensive general liability insurance as required by Section XVIII of this Consent Decree;

(viii) Failure to hire and obtain EPA approval of Settling Performing Defendants' Supervising Contractor, as required by Section VI of this Consent Decree;

(ix) Failure to implement further response actions or any modification to the SOW pursuant to this Consent Decree;

(x) Failure to timely pay all monies required to be paid pursuant to this Consent Decree in accordance with Section XVI of this Consent Decree;

(xi) Failure to seek EPA approval and to timely record, in the appropriate land records office, Notice of this Consent Decree and all applicable Institutional or Proprietary Controls as required in this Consent Decree, the ROD, and the SOW;

84. Stipulated Penalty Amounts - Plans, Reports, and other Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate other reports, plans, or deliverables (pursuant to this Consent Decree) that are not referenced in Paragraph 83(b) above:

Penalty Per Violation Per Day	Period of Noncompliance
$ 750.00	1st through 14th day
$ 1,500.00	15th through 30th day
$ 3,000.00	31st day and beyond

85. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 99 (Work Takeover), Settling Performing Defendants shall be liable for a stipulated penalty in the amount of $500,000.00. Stipulated penalties under this Paragraph are in addition to the remedies available under Paragraphs 47 (Funding for Work Takeover) and 99 (Work Takeover).

86. 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 XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Performing Defendants of any deficiency; (b)

with respect to a decision by the Director of the Superfund Division, EPA Region 4, under Paragraph 78(b) or 79(a) of Section XX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Performing Defendants' 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 XX (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.

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

88. All penalties accruing under this Section shall be due and payable to the United States within 30 days of Settling Performing Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Performing Defendants invoke the Dispute Resolution procedures under Section XX (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 Paragraphs 58(b) and 58(c) (Payment Instructions).

89. Penalties shall continue to accrue as provided in Paragraph 86 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 EPA within 15 days of the agreement or the receipt of EPA's decision or order;

(b) If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Performing Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Paragraph 89(c);

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

90. If Settling Performing Defendants fail to pay stipulated penalties when due, Settling Performing Defendants shall pay Interest on the unpaid stipulated penalties as follows: (a) if Settling Performing Defendants have 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 89 until the date of payment; and (b) if Settling Performing Defendants fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 88 until the date of payment. If Settling Performing Defendants fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

92. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of Settling Performing Defendants' 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 provided in this Consent Decree, except in the case of a willful violation of this Consent Decree.

93. 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.

XXII. COVENANTS BY PLAINTIFFS

94. Covenants for Settling Performing Defendants and Settling Non-Performing Federal Agencies by United States and the State. In consideration of the actions that will be performed and the payments that will be made by Settling Performing Defendants and Settling Non-Performing Federal Agencies under this Consent Decree, and except as specifically provided in Paragraphs 95, 96, and 98, the United States and the State covenant not to sue or to take administrative action against Settling Performing Defendants and Settling Non-Performing Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA, or with respect to the State, pursuant to Code Sections 12-8-71, 12-8-96, and 12-8-96.1 of HSRA and Section 107(a) of CERCLA, relating to the Site. Except

with respect to future liability, these covenants shall take effect upon the receipt by EPA and the State of the payments required by Paragraphs 53(a) and 53(b) (Payments for Past Response Costs) and any Interest or stipulated penalties due thereon under Paragraph 60 (Interest) or Section XXI (Stipulated Penalties). With respect to future liability, these covenants shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 49(b) of Section XIV (Certification of Completion). These covenants are conditioned upon the satisfactory performance by Settling Performing Defendants and Settling Non-Performing Federal Agencies of their obligations under this Consent Decree. These covenants extend only to Settling Performing Defendants and Settling Non-Performing Federal Agencies and do not extend to any other person.

95. United States' and the State's Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order, seeking to compel Settling Performing Defendants, and EPA and the State reserve the right to issue an administrative order seeking to compel Settling Non-Performing Federal Agencies, to perform further response actions relating to the Site and/or to pay the United States and the State for additional costs of response if, (a) prior to Certification of Completion of the Remedial Action, (i) conditions at the Site, previously unknown to EPA, are discovered, or (ii) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

96. United States' and the State's Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent

Decree is without prejudice to, the right to institute proceedings in this action or in a new action or to issue an administrative order, seeking to compel Settling Performing Defendants, and EPA and the State reserve the right to issue an administrative order seeking to compel Settling Non-Performing Federal Agencies, to perform further response actions relating to the Site and/or to pay the United States and the State for additional costs of response if, (a) subsequent to Certification of Completion of the Remedial Action, (i) conditions at the Site, previously unknown to EPA, are discovered, or (ii) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

97. For purposes of Paragraph 95, the information and the conditions known to EPA will include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 96, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

98. General Reservations of Rights Against Settling Performing Defendants and Settling Non-Performing Federal Agencies. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Performing Defendants and EPA and the federal natural resource trustee and the State reserve, and this Consent Decree is without

prejudice to, all rights against Settling Non-Performing Federal Agencies, with respect to all matters not expressly included within Plaintiffs' covenants. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve all rights against Settling Performing Defendants, and EPA and the federal natural resource trustees and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Non-Performing Federal Agencies, with respect to:

(a) claims based on a failure by Settling Performing Defendants or Settling Non-Performing 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 or operation of the Site by Settling Performing Defendants or Settling Non-Performing Federal Agencies when such ownership or operation commences after signature of this Consent Decree;

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

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

(f) criminal liability;

(g) liability for violations of federal or state law which occur during or after implementation of the Work;

(h) liability, prior to Certification of Completion of the Remedial Action, 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 13 (Modification of SOW or Related Work Plans); and

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

99. Work Takeover.

(a) In the event EPA determines that Settling Performing Defendants (i) have ceased implementation of any portion of the Work, or (ii) are seriously or repeatedly deficient or late in their performance of the Work, or (iii) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Settling Performing Defendants. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Settling Performing Defendants a period of 15 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

(b) If, after expiration of the 15-day notice period specified in Paragraph 99(a), Settling Performing Defendants have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Settling Performing Defendants in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 99(b). Funding of Work Takeover costs is addressed under Paragraph 47.

(c) Settling Performing Defendants may invoke the procedures set forth in Paragraph 78 (Record Review), to dispute EPA's implementation of a Work Takeover under Paragraph 99(b). However, notwithstanding Settling Performing Defendants' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 99(b) until the earlier of (1) the date that Settling Performing Defendants remedy, 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 78 (Record Review) requiring EPA to terminate such Work Takeover.

100. 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.

XXIII. COVENANTS BY SETTLING PERFORMING DEFENDANTS AND SETTLING NON-PERFORMING FEDERAL AGENCIES

101. Covenant Not to Sue by Settling Performing Defendants. Subject to the reservations in Paragraph 105, Settling Performing Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or the State with respect to the Site, and this Consent Decree, including, but not limited to:

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

(b) any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Site; 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 Georgia Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

(d) any direct or indirect claim for disbursement from the AER Special Account or AER Disbursement Special Account, except as provided in Section XVII (Disbursement of Special Account Funds).

102. In consideration of the actions that will be performed and payments that will be made by Settling Defendants and Settling Federal Agencies pursuant to this Consent Decree and the agreement described in Paragraph 6 and 55 of this Consent Decree, Settling Performing Defendants agree not to assert any claims or causes of action and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for all "matters addressed" in this Consent Decree. "Matters addressed" are defined in Paragraph 120 of this Consent Decree.

103. Covenant by Settling Non-Performing Federal Agencies. Settling Non-Performing Federal Agencies agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law with respect to the Site and this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Non-Performing Federal Agency

in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

104. Except as provided in Paragraph 107 (Claims Against MSW Generators and Transporters), Paragraph 109 (Claims Against *De Minimis* and Ability to Pay Parties) and Paragraph 123 (Res Judicata and Other Defenses), the covenants in this Section 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 XXII (Covenants by Plaintiffs), other than in Paragraphs 98(a) (claims for failure to meet a requirement of the Decree), 98(f) (criminal liability), and 98(g) (violations of federal/state law during or after implementation of the Work), but only to the extent that Settling Performing Defendants' 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.

105. Settling Performing Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, 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 Performing Defendants' plans, reports, other deliverables or activities. Settling Performing Defendants also reserve, and this Consent Decree is without prejudice to,

claims against the State, subject to the provisions of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20, *et seq.*, and brought pursuant to any statute other than CERCLA, RCRA, or HSRA and for which the waiver of sovereign immunity is specifically found. Settling Performing Defendants also reserve, and this Consent Decree is without prejudice to, contribution claims against Settling Federal Agencies in the event any claim is asserted by the United States or the State against Settling Performing Defendants pursuant to any of the reservations in Section XXII (Covenants by Plaintiffs) other than in Paragraphs 98(a) (claims for failure to meet a requirement of the Decree), 98(f) (criminal liability), and 98(g) (violations of federal/state law during or after implementation of the Work), but only to the extent that Settling Performing Defendants' 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.

106. 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).

107. Claims Against MSW Generators and Transporters. Settling Performing Defendants agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for all matters relating to the Site against any person where the person's liability to Settling Performing Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of Municipal Solid Waste (MSW) at the Site, if the volume of MSW disposed, treated or transported by such person to the Site did not exceed 0.2 percent of the total volume of waste at the Site.

108. The waiver in Paragraph 107 shall not apply with respect to any defense, claim, or cause of action that a Settling Performing Defendant may have against any person meeting the criteria in Paragraph 107 if such person asserts a claim or cause of action relating to the Site against such Settling Performing Defendant. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines that: (a) the MSW contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; (b) the person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or § 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927; or (c) the person impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site.

109. Claims Against *De Minimis* and Ability to Pay Parties. Settling Performing Defendants agree not to assert any claims or causes of action and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for all matters relating to the Site against any person that has entered or in the future enters into a final CERCLA Section 122(g) *de minimis* settlement or a final settlement based on limited ability to pay, with EPA with respect to the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Performing Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Performing Defendant.

XXIV. *DE MINIMIS* SETTLEMENT PROVISIONS

110. Covenants for Settling *De Minimis* Parties (Settling *De Minimis* Defendants, Settling *De Minimis* State Agencies, and Settling *De Minimis* Federal Agencies) by the United States and the State. In consideration of the payments that will be made by Settling *De Minimis* Parties under the terms of this Consent Decree, and except as specifically provided in Paragraphs 111 and 112 (Reservations of Rights by United States and the State), the United States and the State covenant not to sue or take administrative action against any of the Settling *De Minimis* Parties pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, or with respect to the State, pursuant to Code Sections 12-8-71, 12-8-96, and 12-8-96.1 of HSRA and Section 107(a) of CERCLA, relating to the Site. With respect to present and future liability, these covenants shall take effect for each Settling *De Minimis* Party upon receipt of that Settling *De Minimis* Party's payment as required by Section XVI (Payment for Response Costs). With respect to each Settling *De Minimis* Party, individually, these covenants are conditioned upon: (a) the satisfactory performance by the Settling *De Minimis* Party of all obligations under this Consent Decree; and (b) the veracity of the information provided to EPA by the Settling *De Minimis* Party relating to the Settling *De Minimis* Party's involvement with the Site. These covenants extend only to Settling *De Minimis* Parties and do not extend to any other person.

111. General Reservations of Rights as to Settling *De Minimis* Parties (Settling *De Minimis* Defendants, Settling *De Minimis* State Agencies, and Settling *De Minimis* Federal Agencies). The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling *De Minimis* Defendants and Settling *De Minimis* State Agencies, and EPA, the State, and the federal natural resource trustees reserve, and this Consent Decree is without prejudice to, all rights against Settling *De Minimis* Federal Agencies, with respect to all

matters not expressly included within Section XXIV. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve all rights against Settling *De Minimis* Defendants and Settling *De Minimis* State Agencies and EPA and the federal natural resource trustees reserve, and this Consent Decree is without prejudice to, all rights against Settling *De Minimis* Federal Agencies, with respect to:

(a) liability for failure to meet a requirement of this Consent Decree;

(b) criminal liability;

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

(d) liability based on the ownership or operation of the Site by Settling *De Minimis* Defendants, Settling *De Minimis* State Agencies, or Settling *De Minimis* Federal Agencies; or

(e) liability based on Settling *De Minimis* Defendants', Settling *De Minimis* State Agencies', or Settling *De Minimis* Federal Agencies' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling *De Minimis* Defendants, Settling *De Minimis* State Agencies, or by DOJ on behalf of Settling *De Minimis* Federal Agencies.

112. Notwithstanding any other provision in this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, the right to institute proceedings against any individual Settling *De Minimis* Defendant or Settling *De Minimis* State Agency in this action or in a new action or to issue an administrative order to any individual Settling *De Minimis*

Defendant or Settling *De Minimis* State Agency seeking to compel that Settling *De Minimis* Defendant or Settling *De Minimis* State Agency, and EPA and the State reserve, and this Consent Decree is without prejudice to, the right to issue an administrative order to any individual Settling *De Minimis* Federal Agency, to perform response actions relating to the Site, and/or to reimburse the United States and the State for additional costs of response, if information is discovered that indicates that such Settling *De Minimis* Party contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such Settling *De Minimis* Party no longer qualifies as a *de minimis* party at the Site because it no longer meets the criteria to participate in the *de minimis* settlement, pursuant to Appendices C, D-2, E, and K.

113. Covenants by the Settling *De Minimis* Defendants and Settling *De Minimis* State Agencies. Settling *De Minimis* Defendants and Settling *De Minimis* State Agencies covenant not to sue and agree not to assert any claims or causes of action against the United States, the State, or their contractors or employees with respect to the Site and this Consent Decree, including, but not limited to:

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

(b) any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of Georgia, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

(c) any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or State law regarding the Site.

Except as provided in Paragraph 116 (waiver of claims) and Paragraph 123 (waiver of claim-splitting defenses), these covenants shall not apply in the event that the United States or the State brings a cause of action or issues an order pursuant to any of the reservations set forth in Paragraphs 111 and 112 (Reservations of Rights by United States and the State), other than in Paragraph 111(a) (claims for failure to meet a requirement of the Decree) or 111(b) (criminal liability), but only to the extent that Settling *De Minimis* Defendants or Settling *De Minimis* State 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.

114. Covenant by Settling *De Minimis* Federal Agencies. Settling *De Minimis* Federal Agencies agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, or any other provision of law with respect to the Site and this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling *De Minimis* Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

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

116. Settling *De Minimis* Parties agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Section 107(a) or 113 of CERCLA) that they may have for response costs relating to the Site against each other or any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling *De Minimis* Party may have against any person if such person asserts or has asserted a claim or cause of action relating to the Site against such Settling *De Minimis* Party.

117. By signing this Consent Decree, each Settling *De Minimis* Defendant and Settling *De Minimis* State Agency certifies, individually, that to the best of its knowledge and belief, it:

(a) has not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents, or other information (other than identical copies) relating to its potential liability regarding the Site after the earlier notification of potential liability or the filing of a suit against it regarding the Site; and

(b) has and will comply fully with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), Section 3007 of the RCRA, 42 U.S.C. § 9627, and State law.

118. The United States acknowledges that each Settling *De Minimis* Federal Agency (a) is subject to all applicable Federal record retention laws, regulations, and policies; and (b) has certified 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. § 9627, and State law.

XXV. EFFECT OF SETTLEMENT; CONTRIBUTION

119. Except as provided in Paragraph 107 (Claims Against MSW Generators and Transporters) and Paragraph 109 (Claims Against *De Minimis*/Ability to Pay Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 107 (Claims Against MSW Generators and Transporters) and Paragraph 109 (Claims Against *De Minimis*/Ability to Pay Parties), 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 which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. 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).

120. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that each Settling Defendant and each Settling Federal Agency is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States, the State, or any other person; provided, however, that if the United States or the State exercise rights against Settling Performing Defendants (or if

EPA or the federal natural resource trustee or the State assert rights against Settling Federal Agencies) under the reservations in Section XXII (Covenants by Plaintiffs), other than in Paragraphs 98(a) (claims for failure to meet a requirement of the Decree), 98(f) (criminal liability) or 98(g) (violations of federal/state law during or after implementation of the Work), or if the United States exercises rights against Settling *De Minimis* Parties under the reservations in Paragraphs 111 and 112, other than in Paragraph 111(a) (claims for failure to meet a requirement of the Consent Decree) or 111(b) (criminal liability), the "matters addressed" in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

121. Each 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.

122. Each 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 10 days of service of the complaint on such Settling Defendant. In addition, each Settling Defendant shall notify the United States and the State within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

123. 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 Defendants (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 XXII (Covenants by Plaintiffs).

XXVI. ACCESS TO INFORMATION

124. Settling Defendants shall provide to EPA and the State, upon request, copies 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 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 Performing Defendants shall also make available 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.

125. Business Confidential and Privileged Documents.

(a) Settling Defendants 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 Defendants that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R.

Part 2, Subpart B, the public may be given access to such Records without further notice to Settling Defendants.

(b) Settling Defendants may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing Records, they shall provide Plaintiffs with the following: (i) the title of the Record; (ii) the date of the Record; (iii) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (iv) the name and title of each addressee and recipient; (v) a description of the contents of the Record; and (vi) the privilege asserted by Settling Defendants. 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 portion only. Settling Defendants shall retain all Records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

(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.

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

XXVII. RETENTION OF RECORDS

127. Until seven years after Settling Performing Defendants' and Settling *De Minimis* Defendants' receipt of EPA's notification pursuant to Paragraph 50(b) of Section XIV

(Certification of Completion of the Work), each Settling Performing Defendant and Settling *De Minimis* Defendant shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Settling Performing Defendants and Settling *De Minimis* Defendants who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each Settling Performing 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 which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Settling Performing 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.

128. The United States acknowledges that each Settling Federal Agency (a) is subject to all applicable Federal record retention laws, regulations, and policies; and (b) has certified 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. The United States acknowledges that each Settling *De Minimis* State Agency is subject to management of its records in accordance with the "Georgia Records Act," O.C.G.A. §§ 50-18-19, *et seq.*, and that the Settling *De Minimis* State Agencies agree to comply with all requirements for retention of records contained in the Act, or as otherwise required by law. If

Settling *De Minimis* State Agencies are in possession of records that relate in any manner to their liability under CERCLA with respect to the Site at the conclusion of the record retention period provided for Settling Performing Defendants in Paragraph 127, Settling *De Minimis* State Agencies shall deliver any such Records to EPA.

129. At the conclusion of this record retention period, Settling Defendants 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 Defendants shall deliver any such Records to EPA or the State. Settling Defendants may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide 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 asserted by Settling Defendants. 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 portion only. Settling Defendants shall retain all Records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no Records created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged or confidential.

130. Each Settling Performing Defendant and Settling Non-Performing Federal Agency certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (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 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.

XXVIII. NOTICES AND SUBMISSIONS

131. 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. Any notice may be given by electronic mail, courier, overnight mail, hand delivery, or by U.S. Mail. 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 Defendants, 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 DOJ.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-10081

and: Chief, Environmental Defense Section

Environment and Natural Resources Division

U.S. Department of Justice

P.O. Box 23986

Washington, D.C. 20026-3986

Re: DJ # 90-11-6-18922

and: Director, Superfund Division

United States Environmental Protection Agency

Region 4

61 Forsyth Street, S.W.

Atlanta, Georgia 30303

As to EPA: Giezelle Bennett

EPA Project Coordinator

United States Environmental Protection Agency

Region 4

61 Forsyth Street, S.W.

Atlanta, Georgia 30303

bennett.giezelle@epa.gov

(404) 562-8824

As to the Regional Financial Management Officer:	Paula Painter United States Environmental Protection Agency Region 4 61 Forsyth Street, S.W. Atlanta, Georgia 30303 painter.paula@epa.gov (404) 562-8887
As to the State:	Amy Potter State Project Coordinator Land Protection Branch Georgia Environmental Protection Division 4244 International Parkway Atlanta, Georgia 30354 Amy.Potter@dnr.state.ga.us (404) 657-8657
As to Settling Performing Defendants:	Chet Tisdale and Amy Magee Settling Performing Defendants' Counsel King & Spalding LLP 1180 Peachtree Street NE Atlanta, Georgia 30309 Ctisdale@KSLAW.com Amagee@KSLAW.com (404) 572-4820

As to Settling *De Minimis* Defendants:	Barbara Gallo Settling *De Minimis* Defendants' Counsel Krevolin Horst LLC One Atlantic Center 1201 West Peachtree Street, NW, Suite 3250 Atlanta, Georgia 30309 gallo@khlawfirm.com (404) 888-0169
As to Settling Federal Agencies:	Dustin J. Maghamfar Trial Attorney U.S. Department of Justice Environmental Defense Section P. O. Box 23986 Washington, D.C. 20026-3986 Dustin.Maghamfar@usdoj.gov (202) 514-1806

As to Settling *De Minimis* State Agencies:	Nancy Gallagher Settling *De Minimis* State Agencies' Counsel Georgia Department of Law Division 02RCA 40 Capitol Square SW Atlanta, Georgia 30334-1300 ngallagher@law.ga.gov (404) 651-5801

XXIX. RETENTION OF JURISDICTION

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

XXX. APPENDICES

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

"Appendix A" is the list of Settling Defendants.

"Appendix B" is the list of Settling Performing Defendants.

"Appendix C" is the Cost Matrix for the Settling *De Minimis* Defendants.

"Appendix D-1" is the list of the Settling Non-Performing Federal Agencies.

"Appendix D-2" is the Cost Matrix for the Settling *De Minimis* Federal Agencies.

"Appendix E" is the Cost Matrix for the Settling *De Minimis* State Agencies.

"Appendix F" is the map of the Site.

"Appendix G" is the ROD.

"Appendix H" is the SOW.

"Appendix I" are the Performance Guarantee forms.

"Appendix J" are the Proprietary Controls.

"Appendix K" is the list of criteria established by EPA to qualify for *de minimis* PRP status at this Site.

XXXI. COMMUNITY RELATIONS

134. If requested by EPA or the State, Settling Performing Defendants shall participate in community relations activities pursuant to the community relations plan to be developed by EPA. EPA will determine the appropriate role for Settling Performing Defendants under the Plan. Settling Performing Defendants 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 Performing Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA or the State to explain activities at or relating to the Site. 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 Defendants shall pay pursuant to Section XVI (Payments for Response Costs).

XXXII. MODIFICATION

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

136. Modifications (non-material or material) that do not affect the obligations of or the protections afforded to Settling *De Minimis* Parties may be executed without the signatures of the Settling *De Minimis* Parties.

137. Except as provided in Paragraph 13 (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 Performing Defendants, and shall be effective upon approval by the Court. Except as provided in Paragraph 13 (Modification of SOW or Related Work Plans), 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 Performing Defendants. 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.

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

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

139. 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 reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

140. 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.

XXXIV. SIGNATORIES/SERVICE

141. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice and the Director of the Georgia Environmental Protection Division 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.

142. Each 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 Defendants in writing that it no longer supports entry of the Consent Decree.

143. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants agree to accept service in that manner and to waive the formal service

requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXXV. FINAL JUDGMENT

144. 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.

145. 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 Defendants. The Court finds that there is no just reason for delay and, therefore, enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 9th DAY OF February, 2017.

United States District Judge

FOR THE UNITED STATES OF AMERICA:

9/22/11
Date

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

9/22/11
Date

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

9/22/11
Date

Dustin J. Maghamfar
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

September 30, 2011
Date

s/Ken Crowder
Ken Crowder
Assistant United States Attorney
Southern District of Georgia
United States Attorney's Office
P.O. Box 2017
Augusta, GA 30903

8/30/11
Date

Franklin E. Hill, Director
Superfund Division
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

8/25/11
Date

Kavita K. Batra
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FOR THE STATE OF GEORGIA

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