

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MRC HOLDINGS, INC.,

Defendant.

CIVIL ACTION NO. _____

RD/RA CONSENT DECREE

TABLE OF CONTENTS

| | | |
|--------|--|----|
| I. | BACKGROUND | 1 |
| II. | JURISDICTION | 4 |
| III. | PARTIES BOUND | 5 |
| IV. | DEFINITIONS | 6 |
| V. | GENERAL PROVISIONS | 12 |
| VI. | PERFORMANCE OF THE WORK BY SETTLING DEFENDANT .. | 15 |
| VII. | REMEDY REVIEW | 23 |
| VIII. | QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS | 24 |
| IX. | ACCESS AND INSTITUTIONAL CONTROLS | 27 |
| X. | REPORTING REQUIREMENTS | 34 |
| XI. | EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS | 36 |
| XII. | PROJECT COORDINATORS | 40 |
| XIII. | PERFORMANCE GUARANTEE | 41 |
| XIV. | CERTIFICATION OF COMPLETION | 49 |
| XV. | EMERGENCY RESPONSE | 51 |
| XVI. | PAYMENTS FOR RESPONSE COSTS | 52 |
| XVII. | INDEMNIFICATION AND INSURANCE | 55 |
| XVIII. | FORCE MAJEURE | 58 |
| XIX. | DISPUTE RESOLUTION | 61 |
| XX. | STIPULATED PENALTIES | 66 |

XXI. COVENANTS NOT TO SUE BY PLAINTIFF 73

XXII. COVENANTS BY SETTLING DEFENDANT 77

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION ... 80

XXIV. ACCESS TO INFORMATION 82

XXV. RETENTION OF RECORDS 84

XXVI. NOTICES AND SUBMISSIONS 85

XXVII. EFFECTIVE DATE 87

XXVIII. RETENTION OF JURISDICTION 87

XXIX. APPENDICES 88

XXX. COMMUNITY RELATIONS 88

XXXI. MODIFICATION 89

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT 89

XXXIII. SIGNATORIES/SERVICE 90

XXXIV. FINAL JUDGMENT 91

APPENDIX A: SEPTEMBER 29, 2008 RECORD OF DECISION

APPENDIX B: STATEMENT OF WORK FOR OPERABLE UNIT TWO

APPENDIX C: MAP OF SITE

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 MRI Superfund Site in Tampa, Hillsborough County, Florida, together with accrued interest; and (2) performance of response work by the defendant at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. EPA received comments from the Florida Department of Environmental Protection ("FDEP") on the Proposed Plan on May 12, 2008 and comments from FDEP on the draft ROD on September 30, 2008.

D. 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 Florida (the "State") on January 22, 2009 of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Department of Interior and the National Oceanic and Atmospheric Administration on November 4, 2008 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

F. MRC Holdings, Inc. ("Settling Defendant") does not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor does it acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

G. 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 December 23, 1996, Fed. Reg. Vol. 61, No. 247.

H. In response to the release or a substantial threat of a release of a hazardous substance(s) at or from the Site, the Settling Defendant commenced on April 9, 2003, an Operable Unit Two (OU-2) Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

I. EPA and the Settling Defendant completed the Remedial Investigation ("RI") Report on November 15, 2007, and the Settling Defendant completed a Feasibility Study ("FS") Report on October 18, 2007, revised on January 16, 2008 and subsequently approved on January 16, 2008.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on April 14, 2008, 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. The comments and EPA's responses to the comments are available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

K. The decision by EPA on the remedial action to be implemented for OU-2 at the Site is embodied in a Record of Decision ("ROD"), executed on September 29, 2008, on which the State had a reasonable opportunity to review and comment. The ROD includes EPA's explanation for any significant differences between the ROD and the proposed plan as well as a responsiveness summary to the public comments.

L. Based on the information presently available to EPA, EPA believes that the Remedial Action and the Work will be properly and promptly conducted

by the Settling Defendant if conducted in accordance with the requirements of this Consent Decree and its appendices.

M. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by the Settling Defendant shall constitute a response action taken or ordered by the President.

N. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that 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). This Court also has personal jurisdiction over the Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, the Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. The Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon the Settling Defendant and its successors and assigns. Any change in ownership or corporate status of the 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. The Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing the Settling 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. The Settling Defendant or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. The Settling Defendant shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with 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 the Settling Defendant within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

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

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

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

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this 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 effective date of this Consent Decree as provided in Paragraph 100.

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

"Feasibility Study" shall mean those activities undertaken by the Settling Defendant to develop and evaluate alternatives for remedial action for OU-2 to prevent, mitigate or otherwise respond to the migration or the release or threatened release of hazardous substances, pollutants, or contaminants from the Site.

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

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying 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, IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XV, and Paragraph 82 of Section XXI. Future Response Costs shall also include all Interim Response Costs and all interest on the Interim Response Costs that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from February 19, 2008, to the date of entry of this Consent Decree.

"Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between February 19, 2008, and the effective date of this Consent Decree, or (b) incurred prior to the effective date of this Consent Decree 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.

"Municipal sewage sludge" shall mean any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage, and may include residue removed, all or in part, during the treatment of wastewater from manufacturing or processing operations, provided that such residue has essentially the same characteristics as residue removed during the treatment of domestic sewage.

"Municipal solid waste" shall mean household waste and solid waste collected from non-residential sources that is essentially the same as household waste. While the composition of such wastes may vary considerably, municipal solid waste generally is composed of large volumes of non-hazardous substances (e.g., yard waste, food waste, glass, and aluminum) and can contain

small amounts of other wastes as typically may be accepted in RCRA Subtitle D landfills.

"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 this Consent Decree and the Statement of Work (SOW).

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

"Parties" shall mean the United States and the Settling Defendant.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Tables 9 and 10 of the ROD.

"Plaintiff" shall mean the United States.

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

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to Operable Unit Two at the Site signed on September 29, 2008, by the Division Director, Superfund Division, EPA Region 4, and all attachments thereto. The ROD is attached as Appendix A.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendant to implement the ROD, in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

"Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 12 of this Consent Decree and approved by EPA, and any amendments thereto.

"Remedial Design" shall mean those activities to be undertaken by the Settling Defendant 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 11 of this Consent Decree and approved by EPA, and any amendments thereto.

"Remedial Investigation" shall mean those activities undertaken by the Settling Defendant to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened

release of hazardous substances, pollutants, or contaminants at or from the Site into the environment for OU-2.

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

"Settling Defendant" shall mean MRC Holdings, Inc.

"Site" shall mean the MRI Superfund Site, encompassing approximately 11.7 acres, as well as the drainage pathway generally running north along the railroad bed as described in the Record of Decision, located at 9220 Stannum Street in Tampa, Hillsborough County, Florida and depicted generally on the map attached as Appendix C.

"State" shall mean the State of Florida.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site for OU-2, as set forth in Appendix B to this Consent Decree, and any modifications made in accordance with this Consent Decree.

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

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

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

under Section 101(33), 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

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

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Settling Defendant, to reimburse response costs of the Plaintiff, and to resolve the claims of Plaintiff against the Settling Defendant as provided in this Consent Decree.

6. Commitments by the Settling Defendant. The Settling Defendant shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules required herein or developed by the Settling Defendant and approved by EPA pursuant to this Consent Decree. The Settling Defendant shall also reimburse the United States for Future Response Costs as provided in this Consent Decree.

7. Compliance With Applicable Law. All activities undertaken by the Settling Defendant pursuant to this Consent Decree shall be performed in

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

8. Permits

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

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

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.

9. Notice to Successors-in-Title

a. With respect to any property owned or controlled by the Settling Defendant that is located within the Site, within 45 days after the entry of this Consent Decree, the Settling Defendant shall submit to EPA for review and approval a notice to be filed with the Hillsborough County Recorder's Office for the State of Florida, which shall provide notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Site on September 29, 2008, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. Such notice shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Settling Defendant shall record the notice within 10 days of EPA's approval of the notice. The Settling Defendant shall provide EPA with a certified copy of the recorded notice within 10 days of recording such notice.

b. At least 30 days prior to the conveyance of any interest in property located within the Site including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Settling Defendant shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section IX

(Access and Institutional Controls), and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section IX (Access and Institutional Controls). At least 30 days prior to such conveyance, the Settling Defendant shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.

c. In the event of any such conveyance, the Settling Defendant's obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls, pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the Settling Defendant. In no event shall the conveyance release or otherwise affect the liability of the Settling Defendant to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by the Settling Defendant pursuant to Sections VI (Performance of the Work by Settling

Defendant), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Within 20 days after signature of this Consent Decree by the Settling Defendant, the Settling Defendant shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, the Settling Defendant proposes to change a Supervising Contractor, the Settling Defendant shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify the Settling Defendant in writing. The Settling Defendant shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to it 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. The Settling Defendant may select any contractor from that list that is not disapproved and shall notify EPA 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 the Settling Defendant from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, the Settling Defendant may seek relief under the provisions of Section XVIII (Force Majeure) hereof.

11. Remedial Design.

a. Unless approved by EPA prior to the lodging or entering of the Consent Decree, within 60 days after EPA's issuance of an authorization to proceed pursuant to Paragraph 10, the Settling Defendant shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan"). The Remedial Design Work Plan 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.

b. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design tasks identified in the SOW, including, but not limited to plans and schedules for a Design Sampling and Analysis Plan and a Remedial Design Quality Assurance Project Plan that meets the requirements specified in Section VIII (Quality Assurance, Sampling and Data Analysis) of the Consent Decree and Remedial Design Health and Safety

Plan. In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action Work Plan.

c. After a reasonable opportunity for review and comment by the State, upon approval of the Remedial Design Work Plan by EPA, the Settling Defendant shall implement the Remedial Design Work Plan. The Settling Defendant shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, the Settling Defendant shall not commence further Remedial Design activities at the Site prior to approval of the RD Work Plan. The RD Report shall present the results of all activities conducted pursuant to the Remedial Design Work Plan.

d. The Preliminary Design, as provided for in Task II Paragraph B of the SOW, shall include, at a minimum, the following: (1) results of data acquisition activities; (2) design criteria; (3) draft plans and specifications; (4) a plan for satisfying permit requirements; (5) preliminary design analysis; and (6) a draft construction schedule.

e. The Pre-final/Final Design as provided for in Task II Paragraph C of the SOW shall include, at a minimum, the following:
(1) a complete design analysis; (2) final plans and specifications; (3) a final

construction schedule; (4) a construction cost estimate; and (5) a construction quality assurance plan (CQAP) including identification of the Supervising Contractor. The CQAP shall be prepared in accordance with Task II Paragraph C of the SOW.

12. Remedial Action.

a. Concurrent with the submittal of the final design, the Settling Defendant shall submit to EPA and the State, a draft work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Draft Remedial Action Work Plan 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 Plan and approved by EPA. At the same time as it submits the draft Remedial Action Work Plan, the Settling Defendant shall submit to EPA and the State a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree.

b. The Remedial Action Work Plan shall be prepared in accordance with Task III Paragraph A of the SOW. Concurrent with the Remedial Action Work Plan, the Settling Defendant shall submit a draft Construction Management Plan (CMP), a preliminary Construction Quality Control Plan (CQCP), and a Contingency Plan. The RA Work Plan, CMP, CQCP, and Contingency Plan must be reviewed and approved by EPA and the Construction HASP reviewed by EPA prior to the mobilization for the RA.

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

d. The Settling Defendant shall continue to implement the Remedial Action and Operation & Maintenance (O&M) until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

13. Modification of the SOW or Related Work Plans.

a. If EPA determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated in the SOW and/or such work plans. Provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

b. For the purposes of this Paragraph 13 and Paragraph 50 only, the "scope of the remedy selected in the ROD" includes those items set forth in Section 11.2 of the ROD.

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

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

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

14. The Settling Defendant acknowledges and agrees that 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 Plaintiff that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

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

a. The Settling Defendant shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Defendant shall notify the state in which the planned receiving facility is

located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Settling Defendant following the award of the contract for Remedial Action construction. The Settling Defendant shall provide the information required by Paragraph 15. a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

VII. REMEDY REVIEW

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

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. The Settling Defendant and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a

result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

19. Settling Defendant's Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site as provided for in Paragraph 17 above, the Settling Defendant shall undertake such further response actions. The Settling Defendant may invoke the procedures set forth in Paragraph 66 (record review) to dispute (1) EPA's determination that the Remedial Action is not protective of human health and the environment, or (2) EPA's selection of the further response actions.

20. Submissions of Plans. If Settling Defendant is required to perform the further response actions pursuant to Paragraph 19, it shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendant) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

21. The Settling Defendant shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/103, March 2001), "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 the Settling Defendant of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, the Settling Defendant shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, Quality Assurance Project Plans ("QAPP") that are consistent with the SOWs, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPPs and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. The Settling Defendant shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by the Settling Defendant in implementing this Consent Decree. In addition, the Settling Defendant shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. The Settling Defendant shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this

Decree. The Settling Defendant shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. The Settling Defendant shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPPs approved by EPA.

22. Upon request, the Settling Defendant shall allow split or duplicate samples to be taken by EPA or its authorized representatives. The Settling Defendant shall notify EPA not less than 30 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Settling Defendant to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Settling Defendant's implementation of the Work.

23. The Settling Defendant shall submit to EPA two (2) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of the Settling Defendant 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 hereby retains all of its information gathering and inspection authorities

and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

25. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by the Settling Defendant, the Settling Defendant shall:

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

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States;
- (3) Conducting investigations relating to contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Implementing the Work pursuant to this Consent Decree;

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

(8) Assessing the Settling Defendant's compliance with this Consent Decree; and

(9) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented pursuant to this Consent Decree. Such restrictions include, but are not limited to: 1) prohibition of residential uses of the property; 2) prohibition of the consumption of contaminated groundwater at the Site; and 3) prohibition of activities that may reduce the integrity or effectiveness of the solidified materials; and

c. if EPA so requests, execute and record in the Recorder's Office of Hillsborough County, State of Florida, an easement and/or covenant, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited

to, those activities listed in Paragraph 25. a of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions and institutional controls listed in Paragraph 25. b of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The Settling Defendant shall grant the access rights and the rights to enforce the land/water use restrictions and institutional controls to one or more of the following persons, as determined by EPA, (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the Settling Defendant and its representatives, and/or (iv) other appropriate grantees. The Settling Defendant shall, within 45 days of EPA's request, submit to EPA for review and approval with respect to such property:

(1) a draft easement/covenant, in substantially the form to be provided by EPA, that is enforceable under the laws of the State of Florida, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

(2) a current title commitment or report prepared in accordance with the U.S. Department of Justice Title Standards 2001 (the "Standards").

Within 15 days of EPA's approval and acceptance of the easement/covenant, the Settling Defendant shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the easement/covenant with the Recorder's Office of Hillsborough County. Within 30 days of recording the easement/covenant, the Settling Defendant shall provide EPA with final title evidence acceptable under the Standards and a certified copy of the original recorded easement/covenant showing the clerk's recording stamps.

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

a. an agreement to provide access thereto for the Settling Defendant, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25. a of this Consent Decree;

b. an agreement, enforceable by the Settling Defendant and the United States, to abide by the obligations and restrictions established by Paragraph 25. b of this Consent Decree, or that are otherwise necessary to

implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree; and

c. if EPA so requests, the execution and recordation in the Recorder's Office of Hillsborough County, State of Florida, of an easement/covenant, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25. a of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions and institutional controls listed in Paragraph 25. b of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions and institutional controls shall be granted to one or more of the following persons, as determined by EPA, (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the Settling Defendant and its representatives, and/or (iv) other appropriate grantees. Within 45 days of EPA's request, the Settling Defendant shall submit to EPA for review and approval with respect to such property:

(1) A draft easement/covenant, in substantially the form to be provided by EPA, that is enforceable under the laws of the State of Florida, free and clear of all prior liens and encumbrances (except as

approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

(2) a current title commitment or report prepared in accordance with the U.S. Department of Justice Title Standards 2001 (the "Standards").

Within 15 days of EPA's approval and acceptance of the easement/covenant, the Settling Defendant shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, the easement/covenant shall be recorded with the Recorder's Office of Hillsborough County. Within 30 days of the recording of the easement/covenant, the Settling Defendant shall provide EPA with final title evidence acceptable under the Standards and a certified copy of the original recorded easement/covenant showing the clerk's recording stamps.

27. For purposes of Paragraph 26 of this Consent Decree, "best efforts" include the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, restrictive easements, restrictive covenants and/or institutional controls. If any access or land/water use restriction agreements required by Paragraphs 26. a or 26. b of this Consent Decree are not obtained within 45 days of EPA's request, or any access easements or restrictive easements required by Paragraph 26. c of this Consent Decree are not submitted to EPA in draft form within 45 days of EPA's request,

the Settling Defendant shall promptly notify the United States in writing and shall include in that notification a summary of the steps that the Settling Defendant has taken to attempt to comply with Paragraph 26 of this Consent Decree. The United States may, as it deems appropriate, assist the Settling Defendant in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land. The Settling Defendant shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access and/or land/water use restrictions 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 land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, the Settling Defendant shall cooperate with EPA's efforts to secure such governmental controls.

29. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

30. In addition to any other requirement of this Consent Decree, the Settling Defendant shall submit to EPA and the State two (2) copies of written 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 the Settling Defendant or its contractors or agents in the previous month; (c) identify all work plans, plans 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 and/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 the Settling Defendant has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. The Settling Defendant shall submit these progress reports to EPA and

the State by the twentieth day of every month following the lodging of this Consent Decree until EPA notifies the Settling Defendant pursuant to Paragraph 50. b of Section XIV (Certification of Completion). If requested by EPA, the Settling Defendant shall also provide briefings for EPA to discuss the progress of the Work. The data requirements noted under (b) may be satisfied by subsequent technical reports furnished under separate cover.

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

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

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

34. The Settling Defendant shall submit two (2) copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. The Settling Defendant shall simultaneously submit two (2) copies of all such plans, reports and data to the State.

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

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

36. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or

in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendant modifies the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing the Settling Defendant at least one notice of deficiency and an opportunity to cure within 30 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

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

38. Resubmission of Plans

a. Upon receipt of a notice of disapproval pursuant to Paragraph 36(d), the Settling Defendant shall, within 15 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 15-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 39 and 40.

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

39. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendant to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. The Settling Defendant shall implement any such plan, report, or item as modified or

developed by EPA, subject only to its right to invoke the procedures set forth in Section XIX (Dispute Resolution).

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

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

XII. PROJECT COORDINATORS

42. Within 20 days of signature of this Consent Decree by the Settling Defendant, the Settling Defendant and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinator. If a Project Coordinator initially designated is changed, the identity of the successor will be given to the other Party at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendant's Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendant's Project Coordinator shall not be an attorney. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

43. Plaintiff may designate other representatives, including, but not limited to, EPA 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 National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National

Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he 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.

XIII. PERFORMANCE GUARANTEE

44. In order to ensure the full and final completion of the Work, the Settling Defendant shall establish and maintain a Performance Guarantee for the benefit of EPA in the amount of \$6.7 Million (hereinafter "Estimated Cost of the Work") in one or more of the following forms, which must be satisfactory in form and substance to EPA.

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 U.S. 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 U.S. 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 jurisdiction(s) and (b) whose insurance operations are regulated and examined by a State agency;

e. A demonstration that the Settling Defendant meets the financial test criteria of 40 C.F.R. Section 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. Section 264.143(f) are satisfied; or

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 the Settling Defendant, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. Section 264.141(h)) with the Settling Defendant; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. Section 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder.

45. The Settling Defendant has selected as an initial Performance Guarantee a trust fund pursuant to Paragraph 44(c). Within ten days after entry of this Consent Decree, the Settling Defendant shall execute or otherwise finalize

all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding, and such Performance Guarantee(s) shall thereupon be fully effective. Within thirty days of entry of this Consent Decree, the Settling Defendant shall submit 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 Records Management Officer in accordance with Section XXVI ("Notices and Submissions") of this Consent Decree, and to the United States and EPA as specified in Section XXVI.

46. If at any time during the effective period of this Consent Decree, the Settling Defendant provides a Performance Guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 44(e) or Paragraph 44(f) above, such Settling Defendant shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods unless otherwise provided in this Consent Decree, including but not limited to (i) the initial submission of required financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant; (ii) the annual re-submission of such reports and statements within ninety days after the close of each such entity's fiscal year; and (iii) the notification of EPA within ninety days after the close of any fiscal year in which such entity no longer satisfies the financial test

requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of the Performance Guarantee methods 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 refer to the Work required under this Consent Decree, and the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to refer to the Estimated Cost of the Work.

47. In the event that EPA determines at any time that a Performance Guarantee provided by the Settling Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that the Settling Defendant becomes aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, the Settling Defendant, within thirty days of receipt of notice of EPA's determination or, as the case may be, within thirty days of the Settling Defendant becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of Performance Guarantee listed in Paragraph 44 of this Consent Decree that satisfies all requirements set forth in this Section XIII.

In seeking approval for a revised or alternative form of Performance Guarantee, the Settling Defendant shall follow the procedures set forth in Paragraph 49(b)(ii) of this Consent Decree. The Settling Defendant's inability to post a Performance Guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of the Settling Defendant to complete the Work in strict accordance with the terms hereof.

48. The commencement of any Work Takeover pursuant to Paragraph 82 of this Consent Decree shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to Paragraph 44(a), (b), (c), (d), or (f), 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. If 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 in the event that the Performance Guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 44(e), the Settling Defendant shall immediately upon written demand from EPA deposit into an account specified by EPA, 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 the remaining Work to be performed as of such date, as determined by EPA.

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

a. Reduction of Amount of Performance Guarantee. If the Settling Defendant believes that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 44 above, the Settling Defendant may, on any anniversary date of entry of this Consent Decree, 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 the remaining Work to be performed. The Settling Defendant shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval for a revised or alternative form of Performance Guarantee, the Settling Defendant shall follow the procedures set forth in Paragraph 49(b)(ii) of this Consent Decree. If EPA decides to accept such a proposal, EPA shall notify the petitioning Settling Defendant of such decision in writing. After receiving EPA's written acceptance, the Settling Defendant may reduce the amount of the Performance Guarantee in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, the Settling Defendant may reduce the amount of the

Performance Guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute. 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 47 or 49(b) of this Consent Decree.

b. Change of Form of Performance Guarantee.

(i) If, after entry of this Consent Decree, the Settling Defendant desires to change the form or terms of any Performance Guarantee(s) provided pursuant to this Section, the Settling Defendant may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form of the Performance Guarantee provided hereunder. The submission of such proposed revised or alternative form of Performance Guarantee shall be as provided in Paragraph 49(b)(ii) of this Consent Decree. Any decision made by EPA on a petition submitted under this subparagraph (b)(i) shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by the Settling Defendant pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

(ii) The Settling Defendant shall submit a written proposal for a revised or alternative form of Performance Guarantee to EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be

performed, the basis upon which such cost was calculated, and the proposed revised form of 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 form of Performance Guarantee must satisfy all requirements set forth or incorporated by reference in this Section. The Settling Defendant shall submit such proposed revised or alternative form of Performance Guarantee to the EPA Superfund Records Manager in accordance with Section XXVI ("Notices and Submissions") of this Consent Decree. EPA shall notify the Settling Defendant in writing of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this subparagraph. Within ten days after receiving a written decision approving the proposed revised or alternative Performance Guarantee, the Settling Defendant shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such Performance Guarantee(s) shall thereupon be fully effective. The Settling Defendant shall submit 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 Superfund Records Manager within thirty days of receiving a written decision approving the proposed revised or alternative Performance Guarantee

in accordance with Section XXVI ("Notices and Submissions") of this Consent Decree and to the United States and EPA as specified in Section XXVI.

c. Release of Performance Guarantee. If the Settling Defendant receives written notice from EPA in accordance with Paragraph 50 hereof that the Work has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies the Settling Defendant in writing, the Settling Defendant may thereafter release, cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section. The Settling Defendant shall not release, cancel, or discontinue any Performance Guarantee provided pursuant to this Section except as provided in this subparagraph. In the event of a dispute, the Settling Defendant may release, cancel, or discontinue the Performance Guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

XIV. CERTIFICATION OF COMPLETION

50. Completion of the Work

a. Within 90 days after the Settling Defendant concludes that all phases of the Work (including O & M), have been fully performed, the Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by the Settling Defendant, FDEP, and EPA. If, after the pre-certification inspection, the Settling Defendant still believes that the Work has been fully performed, the Settling Defendant shall submit a written report by a

registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of the Settling Defendant or the Settling Defendant's Project Coordinator:

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

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify the Settling Defendant in writing of the activities that must be undertaken by the Settling Defendant pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require the Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 13. b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW, or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). The Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to

its right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

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

XV. EMERGENCY RESPONSE

51. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the Settling Defendant shall, subject to Paragraph 52, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendant shall notify the EPA Emergency Response & Removal Branch, Region 4, at 1-800-562-8700. The Settling Defendant shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans

or documents developed pursuant to the SOW. In the event that the Settling Defendant fails to take appropriate response action as required by this Section, and EPA takes such action instead, the Settling Defendant shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Reimbursement of Response Costs).

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

XVI. REIMBURSEMENT OF RESPONSE COSTS

53. Payments for Future Response Costs

a. The Settling Defendant shall pay to EPA all Future Response Costs not inconsistent with the National Contingency Plan. On a periodic basis the United States will send the Settling Defendant a bill requiring payment that includes a SCORPIOS Report. The Settling Defendant shall make all payments within 30 days of the Settling Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 54. The Settling

Defendant shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Number 040G, and DOJ Case Number 90-11-2-07053/1. The Settling Defendant shall send the check(s) to:

U.S. Environmental Protection Agency
Superfund Payments - Region 4
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

b. At the time of payment, the Settling Defendant shall send notice that payment has been made to the United States, to EPA and to Paula V. Painter, Environmental Protection Specialist, in accordance with Section XXVI (Notices and Submissions).

54. The Settling Defendant may contest payment of any Future Response Costs under Paragraph 53 if it determines that the United States has made an accounting error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendant shall within the 30 day period pay all uncontested Future Response Costs to the

United States in the manner described in Paragraph 53. Simultaneously, the Settling Defendant shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Florida and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendant shall send to the United States, as provided in Section XXVI (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendant shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Defendant shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 53. If the Settling Defendant prevails concerning any aspect of the contested costs, the Settling Defendant shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the United States in the manner described in Paragraph 53; the Settling Defendant shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in

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

55. In the event that the payments required by Paragraph 53 are not made within 30 days of the Settling Defendant's receipt of the bill, the Settling Defendant shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of the Settling Defendant's failure to make timely payments under this Section. The Settling Defendant shall make all payments required by this Paragraph in the manner described in Paragraph 53.

XVII. INDEMNIFICATION AND INSURANCE

56. Settling Defendant's Indemnification of the United States

a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of the Settling Defendant as EPA's authorized representatives under Section 104(e) of CERCLA. The Settling Defendant shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or

on account of, negligent or other wrongful acts or omissions of the Settling Defendant, its 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 the Settling Defendant as EPA's authorized representative under Section 104(e) of CERCLA. Further, the Settling Defendant agrees to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of the Settling Defendant, its 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. The United States shall not be held out as a party to any contract entered into by or on behalf of the Settling Defendant in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendant nor any such contractor shall be considered an agent of the United States.

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

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

58. No later than 15 days before commencing any on-site Work, the Settling Defendant shall secure, and shall maintain, comprehensive general liability insurance with limits of two million dollars, combined single limit, and automobile liability insurance with limits of one million dollars, combined single limit, naming the United States as an additional insured. Settling Defendant shall maintain such insurance through final construction and until such time as it receives EPA's approval of its Final Construction Report/Interim RA Report. In addition, for the duration of this Consent Decree, the Settling Defendant shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance

for all persons performing the Work on behalf of the Settling Defendant in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, the Settling Defendant shall provide to EPA certificates of such insurance and a copy of each insurance policy. The Settling Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If the Settling Defendant demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, the Settling Defendant need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

59. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendant, of any entity controlled by the Settling Defendant, or of the Settling Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite the Settling Defendant's best efforts to fulfill the obligation. The requirement that the Settling Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any potential Force

Majeure event (1) as it is occurring and (2) following the potential Force Majeure event, such that the delay is minimized to the greatest extent possible. Force Majeure does not include financial inability to complete the Work or a failure to attain the Performance Standards.

60. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, the Settling Defendant 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 5 days of when the Settling Defendant first knew that the event might cause a delay. Within 10 days thereafter, the Settling Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendant's rationale for attributing such delay to a Force Majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a

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

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

62. If the Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), it shall do so no later

than 15 days after receipt of EPA's notice. In any such proceeding, the Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the Settling Defendant complied with the requirements of Paragraphs 59 and 60 above. If the Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by the Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

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

64. Any dispute which arises under or with respect to 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.

65. 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 20 days after the conclusion of the informal negotiation period, the Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendant. The Statement of Position shall specify the Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 66 or 67.

b. Within 20 days after receipt of the Settling Defendant's Statement of Position, EPA will serve on the Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 66 or 67. Within 20 days after receipt of EPA's Statement of Position, the Settling Defendant may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendant as to whether dispute resolution should proceed under Paragraph 66 or 67, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. The Settling Defendant may ultimately appeal to the Court to resolve a dispute as to whether Paragraph 66 or 67 applies. The Court shall determine whether Paragraph 66 or 67 is applicable in accordance with the standards of applicability as set forth within Paragraphs 66 and 67, herein.

66. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) 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 the Settling Defendant regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting

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

b. The Director of the Superfund Division, EPA Region 4, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 66. a. This decision shall be binding upon the Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 66. c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 66. b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendant 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 the Settling Defendant's motion.

d. In proceedings on any dispute governed by this Paragraph, the Settling Defendant shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in

accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 66. a.

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

a. Following receipt of the Settling Defendant's Statement of Position submitted pursuant to Paragraph 65, 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 the Settling Defendant unless, within 10 days of receipt of the decision, the Settling Defendant files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to the Settling Defendant's motion.

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

68. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the

Settling Defendant 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 77. 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 the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

69. Settling Defendant, as provided in Paragraphs 70 and 71 of this Section shall be liable to the United States for stipulated penalties in the amounts set forth in Paragraphs 70. a. and 71 below for failure to comply with the requirements of this Consent Decree unless excused under Section XVIII (Force Majeure). "Compliance" by the Settling Defendant shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

70. Stipulated Penalty Amounts - Work

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

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$1,000 | 1st through 14th day |
| \$3,000 | 15th through 30th day |
| \$5,000 | 31st day and beyond |

b. Compliance Milestones.

(1) Submittal and, if necessary, modification of any and all preliminary and final Remedial Design and Remedial Action Work Plans;

(2) Submittal and, if necessary, modification of any significant deliverables as identified in the EPA-approved Remedial Design and Remedial Action Work Plans;

(3) Implementation of the approved Remedial Design and Remedial Action Work Plans;

(4) Submittal and, if necessary, modification of Preliminary, Pre-final and Final Remedial Design and any significant deliverables as identified in the EPA-approved Final Remedial Design;

(5) Completion of the Remedial Action required under this Consent Decree and the SOW;

- (6) Submittal and, if necessary, modification of Remedial Action Reports;
- (7) Submittal and, if necessary, modification of O&M Plan and O&M Manual;
- (8) Establishment of financial assurance as required by this Consent Decree;
- (9) Procurement of insurance;
- (10) Hiring Supervising Contractor;
- (11) Submittal and, if necessary, modification of any Work Plan(s) for further response actions and additional Work pursuant to Sections VI, VII, VIII, or IX, hereof;
- (12) Implementation of further response actions and additional Work pursuant to Sections VI, VII, VIII, or IX, hereof;
- (13) Payment of all monies required to be paid pursuant to Section XVI;
- (14) Recording of Consent Decree, applicable Deed Restrictions and Notices required in Section V, Paragraph 9, and Section IX.

71. Stipulated Penalty Amounts - Reports

a. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to this Consent Decree or SOW:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$ 500 | 1st through 14th day |
| \$1,500 | 15th through 30th day |
| \$3,000 | 31st day and beyond |

72. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 82 of Section XXI (Covenants Not to Sue by Plaintiff), the Settling Defendant shall be liable for a stipulated penalty in the amount of \$250,000.

73. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies the Settling Defendant of any deficiency; (2) with respect to a decision by the Director of the Superfund Division, EPA Region 4, under Paragraph 66. b. or 67. a of Section XIX (Dispute

Resolution), during the period, if any, beginning on the 21st day after the date that the Settling Defendant's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

74. Following EPA's determination that the Settling Defendant has failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendant written notification of the same and describe the noncompliance. EPA may send the Settling Defendant 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 the Settling Defendant of a violation.

75. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the Settling Defendant's receipt from EPA of a demand for payment of the penalties, unless the Settling Defendant invokes the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or

cashier's check(s) made payable to "EPA Hazardous Substances Superfund," and referencing the EPA Region and Site/Spill ID #04OG, the DOJ case number 90-11-2-07053/1, and the name and address of the party making payment, and shall indicate that the payment is for stipulated penalties. The Settling Defendant shall send the check(s) to:

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

and shall send copies of the check(s) to the United States as specified in Section XXVII (Notices and Submissions) to Ms. Paula V. Painter at:

U. S. Environmental Protection Agency
Region 4
Superfund Enforcement & Information Management Branch
Superfund Division
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8960

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

77. Penalties shall continue to accrue as provided in Paragraph 73 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing

shall be paid to EPA within 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, the Settling Defendant 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 Subparagraph c below;

c. If the District Court's decision is appealed by any Party, the Settling Defendant shall pay all accrued penalties determined by the District Court to be owing 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 the Settling Defendant to the extent that it prevails.

78. a. If the Settling Defendant fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. The Settling Defendant shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 75.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek

any other remedies or sanctions available by virtue of the Settling Defendant's violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA. 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 herein, except in the case of a willful violation of the Consent Decree.

79. 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.

XXI. COVENANTS NOT TO SUE BY PLAINTIFF

80. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraph 81 of this Section, the United States covenants not to sue or to take administrative action against the Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA for performance of the Remedial Action and the Work as set forth in the ROD and SOW as referenced herein, and for recovery of Future Response Costs. These covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 53 and Paragraph 54 of Section XVI (Reimbursement of Response Costs). These covenants not to sue are conditioned upon the satisfactory performance by the Settling Defendant of its

obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendant and do not extend to any other person.

81. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 80. The United States reserves, and this Consent Decree is without prejudice to, all rights against the Settling Defendant with respect to all other matters, including but not limited to, the following:

- a. claims based on a failure by the Settling Defendant to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;
- c. liability for future disposal of Waste Material at the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. criminal liability;
- f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and
- g. liability prior to Certification of Completion of the Work, for additional response actions that EPA determines are necessary to achieve

Performance Standards, but that cannot be required pursuant to Paragraph 13 (Modification of the SOW or Related Work Plans); and

h. liability for costs that the United States will incur related to the Site but are not within the definition of Future Response Costs.

82. Work Takeover

- (a) In the event EPA determines that the Settling Defendant has (i) ceased implementation of any portion of the Work, or (ii) is seriously or repeatedly deficient or late in its performance of the Work; or (iii) is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to the Settling Defendant. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide the Settling Defendant a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.
- (b) If, after expiration of the 10-day notice period specified in Paragraph 82(a), the Settling Defendant has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portions of the Work as EPA deems necessary ("Work Takeover"). EPA shall notify the Settling

Defendant in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 82(b).

- (c) The Settling Defendant may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 66, to dispute EPA's implementation of a Work Takeover under Paragraph 82(b). However, notwithstanding the Settling Defendant's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 82(b) until the earlier of (i) the date that the Settling Defendant remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice or (ii) the date that a final decision is rendered in accordance with Section XIX (Dispute Resolution), Paragraph 66, requiring EPA to terminate such Work Takeover.
- (d) After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any performance guarantee(s) provided pursuant to Section XIII of this Consent Decree, in accordance with the provisions of Paragraph 48 of that Section. If and to the extent that EPA is unable to secure the resources guaranteed under any such performance

guarantee(s) and the Settling Defendant fails to remit a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed, all in accordance with the provisions of Paragraph 48, any unreimbursed costs incurred by EPA in performing Work under the Work Takeover shall be considered Future Response Costs that the Settling Defendant shall pay pursuant to Section XVI (Payment for Response Costs).

83. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY SETTLING DEFENDANT

84. Covenant Not to Sue. Subject to the reservations in Paragraph 85, the Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Work, past response actions, and Future Response Costs as defined herein or 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 related to 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 Florida 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.

85. The Settling Defendant reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendant's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and

for which the waiver of sovereign immunity is found in a statute other than CERCLA.

86. 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).

87. The Settling Defendant agrees 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 it may have for all matters relating to the Site against any person where the person's liability to the Settling Defendant with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if:

a. any materials contributed by such person to the Site constituting Municipal Solid Waste (MSW) or Municipal Sewage Sludge (MSS) did not exceed 0.2% of the total volume of waste at the Site; and

b. any materials contributed by such person to the Site containing hazardous substances, but not constituting MSW or MSS, did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials.

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

88. Except as provided in Paragraph 87 (Waiver of Claims Against De Micromis 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. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Except as provided in Paragraph 87 (Waiver of Claims Against De Micromis Parties), each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. 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).

89. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2),

42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for matters addressed in this Consent Decree. For purposes of this Consent Decree, the "matters addressed" are the Remedial Design and Remedial Action for OU-2 (Groundwater), the Work, and Future Response Costs.

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

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

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

of the covenants not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiff).

XXIV. ACCESS TO INFORMATION

93. The Settling Defendant shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. The Settling Defendant shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

94. Business Confidential and Privileged Documents

a. The Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted

to EPA, or if EPA has notified the Settling Defendant that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to the Settling Defendant.

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

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

XXV. RETENTION OF RECORDS

96. Until 10 years after the Settling Defendant's receipt of EPA's notification pursuant to Paragraph 50.b of Section XIV (Certification of Completion of the Work), the Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Settling Defendant's receipt of EPA's notification pursuant to Paragraph 50.b of Section XIV (Certification of Completion), the Settling Defendant shall also instruct its contractors and agents to preserve all documents, records, and information, of whatever kind, nature or description relating to the performance of the Work.

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

or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by the Settling Defendant. However, no documents, reports, or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

98. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State of the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XXVI. NOTICES AND SUBMISSIONS

99. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be

considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Defendant, respectively.

As to the United States:

Bruce Gelber, Chief
Attn: Elizabeth F. Kroop, Trial Attorney
Re: DJ # 90-11-2-07053/1
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Franklin E. Hill, Director
Superfund Division
U.S. Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

Julie Santiago-Ocasio, RPM
EPA Project Coordinator
U.S. Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

Paula V. Painter
Regional Records Management Officer
U.S. Environmental Protection Agency
Region 4
Atlanta Federal Center
Superfund Division, SEIMB
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Debbie Jourdan
Superfund Records Manager
U.S. Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

As to FDEP:

Chris Pellegrino
FDEP Project Manager
2600 Blair Stone Road
MS 4500
Tallahassee, Florida 32399-2400

As to the Settling Defendant:

Richard J. Carroll
MRC Holdings, Inc.
c/o CitiFinancial, Inc.
300 St. Paul Place-BSP17D
Baltimore, MD 21202

Scott Steady, Esq.
Williams Schifino Mangione & Steady, P.A.
One Tampa City Center
Suite 3200
Tampa, Florida 33602

XXVII. EFFECTIVE DATE

100. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXVIII. RETENTION OF JURISDICTION

101. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling

any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

XXIX. APPENDICES

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

"Appendix A" is the ROD.

"Appendix B" is the SOW.

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

XXX. COMMUNITY RELATIONS

103. The Settling Defendant shall propose to EPA its participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendant under the Plan. The Settling Defendant shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, the Settling Defendant 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 to explain activities at or relating to the Site.

XXXI. MODIFICATION

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

105. Except as provided in Paragraph 13 ("Modification of the SOW or related Work Plans"), no material modifications shall be made to the SOW without written notification to and written approval of the United States, the Settling Defendant, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendant.

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

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

107. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 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. The Settling Defendant consents to the entry of this Consent Decree without further notice.

108. 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.

XXXIII. SIGNATORIES/SERVICE

109. Each undersigned representative of the Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice 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.

110. The Settling Defendant hereby 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 the Settling Defendant in writing that it no longer supports entry of the Consent Decree.

111. The 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. The Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XXXIV. FINAL JUDGMENT

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


SO ORDERED THIS DAY OF _____, 20__.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. MRC Holdings, Inc. relating to the MRI Superfund Site.

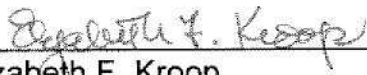
FOR: THE UNITED STATES OF AMERICA

7/13/09
Date



Ellen M. Mahan
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

7/13/09
Date



Elizabeth F. Kroop
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
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Elizabeth.Kroop@usdoj.gov

A. Brian Albritton
United States Attorney
Middle District of Florida

7.30.9

Date



E. Kenneth Stegeby
USAO 112
Assistant, United States Attorney
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
(813) 274-6303 (Phone)
(813) 274-6200 (Facsimile)
Kenneth.Stegeby@usdoj.gov

7/28/09
Date



Franklin E. Hill, Director
Superfund Division
U.S. Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

7/28/09
Date




Kavita K. Batra, Assistant Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. MRC Holdings, Inc. relating to the MRI Superfund Site.


FOR: MRC HOLDINGS, INC.

7/10/09
Date


Richard J. Carroll
Senior Vice President
MRC Holdings, Inc.
c/o CitiFinancial, Inc.
300 St. Paul Place - BSP17D
Baltimore, MD 21202
(410) 332-2804 (Phone)
(410) 332-7637 (Facsimile)

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

7/13/09
Date


Scott Steady, Esq.
Williams Schifino Mangione & Steady, P.A.
One Tampa Center
Suite 3200
Tampa, Florida 33602
(813) 221-2626 (Phone)
(813) 221-7335 (Facsimile)

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2009, I mailed a copy of the foregoing *Notice of Lodging of Consent Decree* with attachments by first-class U.S. mail to the following participant:

Scott Steady, Esquire
Williams Schifino Mangione & Steady, P.A.
One Tampa Center, Suite 3200
Tampa, Florida 33602



E. KENNETH STEGEBY
Assistant United States Attorney