

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. _____

City of Attleboro, Massachusetts;
Avnet, Inc.; Bank of America,
N. A.. Trustee u/w of Lloyd G. Balfour;
BASF Catalysts LLC (f/k/a Englehard
Corporation); Chevron Environmental
Management Company, for itself and on
behalf of Kewanee Industries, Inc.;
ConocoPhillips Company; Handy &
Harman; International Paper Company;
KIK Custom Products, Inc. (f/k/a CCL
Custom Manufacturing, Inc.); Town of
Norton, Massachusetts; Swank, Inc.;
Teknor Apex Co.; Texas Instruments
Incorporated; United States Department
of Energy; and Waste Management of
Massachusetts, Inc.

Defendants.

CONSENT DECREE
REGARDING SHPACK LANDFILL SUPERFUND SITE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), 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, on behalf of EPA, for response actions at the Shpack Landfill Superfund Site in Norton and Attleboro, Massachusetts, together with accrued interest; and (2) performance of studies and response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the Commonwealth of Massachusetts (the "Commonwealth") on June 2, 2005, of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the Commonwealth with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Federal natural resource trustees on May 23, 2005, 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.

E. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any finding of fact or law or any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor do they 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. The Settling Federal Agencies do not admit any issue of fact or law or liability arising out of the transactions or occurrences alleged in any counterclaim asserted by the Settling Defendants.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on June 10, 1986, 51 Fed. Reg. 21054.

G. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, some of the Settling Defendants commenced on September 10, 1990, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

H. Some of the Settling Defendants completed a Remedial Investigation/Feasibility Study ("RI/FS") in June 2004.

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the RI/FS and of the proposed plan for remedial action on June 18, 2004, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

J. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on September 30, 2004, on which the Commonwealth has given its concurrence. The ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

K. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by the Settling Defendants consistent with the requirements of the National Contingency Plan, if conducted in accordance with the requirements of this Consent Decree and its appendices.

L. 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 Defendants shall constitute a response action taken or ordered by the President.

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

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

II. JURISDICTION

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

III. PARTIES BOUND

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

3. Performing Defendants 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 any Performing Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Performing Defendants or their 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. Performing Defendants shall nonetheless be responsible for ensuring that their 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 Performing Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided 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.*

"Commonwealth" shall mean the Commonwealth of Massachusetts.

"Completion of the FUSRAP Response Action" shall mean the date on which EPA issues written notice to the Performing Defendants that the United States Army Corps of Engineers has completed its response activities at the Site pursuant to the Formerly Utilized Sites Remedial Action Program.

"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 114.

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

"Former Shpack Residence Parcel" shall mean the parcel of land in Norton, MA described in Appendix D.

"FUSRAP Response Action" shall mean that portion of the response action required by the Record of Decision that is expected to be performed by the United States Army Corps of Engineers (the "Army Corps") pursuant to the Formerly Utilized Sites Remedial Action Program ("FUSRAP") and Section 104 of CERCLA, 42 U.S.C. § 9604, related to cleanup of Radium and Uranium.

"Future Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that the United States incurs after the Effective Date pursuant to the provisions of this Consent Decree other than those costs specifically included in the definition of Oversight Costs. Future Response Costs shall include but not be limited to costs incurred to enforce the Consent Decree (including dispute resolution); costs incurred pursuant to Sections VII (Remedy Review), IX (Access and Institutional Controls) (including the cost of attorney time and monies paid to secure access and/or to secure or implement institutional controls, including the amount of just compensation), XV (Emergency Response), Section VI (Disposal Services, if provided by EPA) and Paragraph 92.b (Work Takeover) of Section XXI (Covenants by Plaintiff); community relations costs; enforcement support costs; records management costs; ATSDR costs other than those specifically included as Oversight Costs; and accrued interest. Future Response Costs shall include all Interim Response Costs, but shall not include all Oversight Costs. Future Response Costs shall not include costs incurred by the United States pursuant to the Formerly Utilized Sites Remedial Action Program and related to the Site.

"Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between April 1, 2008 and the Effective Date, or (b) incurred between April 1, 2008 and the Effective Date but paid after the Effective Date. Interim Response Costs shall not include costs incurred by the United States pursuant to the Formerly Utilized Sites Remedial Action Program and related to the Site. However, Interim Response Costs shall include costs incurred by EPA and its representatives (including contractors) in coordinating with the United States Army Corps of Engineers with respect to the United States Army Corps of Engineers' activities pursuant to the Formerly Utilized Sites Remedial Action Program and related to the Site.

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

"MADEP" shall mean the Massachusetts Department of Environmental Protection and any successor departments or agencies of the Commonwealth.

"Municipal solid waste" shall mean waste material: (i) generated by a household (including a single or multifamily residence); or (ii) generated by a commercial, industrial or institutional entity, to the extent that the waste material - (I) is essentially the same as waste normally generated by a household; (II) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and (III) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.

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

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work (SOW).

"Oversight Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA and its representatives (including contractors) incur after the Effective Date of the Consent Decree in conducting the following activities: reviewing, discussing, commenting on and attending meetings related to plans, proposals, studies, reports or other items related to the Work; verifying the Work; and overseeing Settling Defendants' implementation of the Work and compliance with the Consent Decree relating to the Work. Oversight Costs shall include, but not be limited to, payroll costs, costs incurred by EPA and its representatives (including contractors) under or in connection with a contract or arrangement for technical assistance in overseeing and reviewing the conduct of activities required under the Consent Decree, travel costs, laboratory costs, technical support costs, interagency and intergovernmental agreement costs (including ATSDR costs), costs under a cooperative agreement with the Commonwealth, and data management costs, insofar as such costs are incurred for activities listed in the first sentence of this definition. Oversight Costs shall also include costs incurred by EPA and its representatives (including contractors) in coordinating with the United States Army Corps of Engineers with respect to activities pursuant to the Formerly Utilized Sites Remedial Action Program and related to work required under the ROD and/or this Consent Decree. Oversight Costs shall not include Future Response Costs.

"Owner Settling Defendants" shall mean the Settling Defendants listed in Appendix E.

"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 Defendants.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through April 1, 2008, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date. Past Response Costs shall not include costs incurred by the United States pursuant to the Formerly Utilized Sites Remedial Action Program and related to the Site.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section L of the ROD and Section IV. of the SOW.

"Performing Defendants" shall mean the Settling Defendants identified and so designated in Appendix F.

"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 the Site signed on September 30, 2004, by the Regional Administrator, EPA Region 1, or his/her delegate, 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 Performing Defendants 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 13 of this Consent Decree and approved by EPA, and any amendments thereto.

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

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

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

"Settling Defendants" shall mean those Parties identified in Appendices G (Non-Owner Settling Defendants) and E (Owner Settling Defendants).

"Settling Federal Agencies" shall mean those departments, agencies, and instrumentalities of the United States identified in Appendix H, which are resolving any claims which have been or could be asserted against them with regard to this Site as provided in this Consent Decree.

"Site" shall mean the Shpack Landfill Superfund Site, encompassing approximately 9.4 acres, located on the Norton-Attleboro, MA town boundary, on the southerly side of Union Road in Norton, MA and on the southerly side of Peckham Street in Attleboro, MA, and depicted generally on the map attached as Appendix C, as well as the adjacent Former Shpack Residence Parcel.

"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, 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 Performing Defendants to supervise and direct the implementation of the Work under this Consent Decree.

"United States" shall mean the United States of America, including without limitation EPA, the Settling Federal Agencies, any federal natural resources trustee and all of the other departments, agencies, and instrumentalities of the United States.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); (4) any "hazardous material" or "oil" under the Massachusetts Oil and Hazardous Release Prevention and Response Act, Mass. Gen. L. ch. 21E, § 2; and (5) any "hazardous waste" under Mass. Gen. L. ch. 21C, § 2.

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

V. GENERAL PROVISIONS

5. Objectives of the Parties and Substitution of the Provisions Set Forth in Appendix I. 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 Defendants, to reimburse certain response costs of the Plaintiff, to resolve the claims of Plaintiff against

Settling Defendants and the claims of the Settling Defendants which have been or could have been asserted against the United States with regard to this Site to the extent as provided in this Consent Decree (other than those reserved in this Consent Decree), and to afford Settling Defendants and Settling Federal Agencies protection from contribution actions or claims to the extent provided by CERCLA and this Consent Decree. In addition, the objectives of the Parties are to provide the Settling Defendants with broader protections, as provided in Appendix I. The paragraphs containing these broader protections, as set forth in Appendix I, shall be substituted for the identically numbered paragraphs in the body of the Consent Decree upon Completion of the FUSRAP Response Action.

6. Commitments by Settling Defendants and Settling Federal Agencies.

a. Performing Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Performing Defendants and approved by EPA pursuant to this Consent Decree. Performing Defendants shall also reimburse the United States for Future Response Costs and Oversight Costs as provided in this Consent Decree. The Settling Federal Agencies shall reimburse Settling Defendants for certain necessary costs of response as provided in this Consent Decree.

b. The obligations of Performing Defendants to finance and perform the Work and to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Performing Defendants to implement the requirements of this Consent Decree, the remaining Performing Defendants shall complete all such requirements.

c. Owner Settling Defendants shall provide cooperation, access and institutional controls, and shall abide by such institutional controls.

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

b. The Performing Defendants 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. At least 30 days prior to the conveyance of any interest in property located within the Site (including the Former Shpack Residence Parcel) including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Owner Settling Defendant(s) and, if applicable, any other Settling Defendant(s) conveying the interest 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 Owner Settling Defendant(s) and, if applicable, any other Settling Defendant(s) conveying the interest shall also give written notice to EPA and the Commonwealth 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.

b. In the event of any such conveyance, the Owner Settling Defendant's and, if applicable, any other 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 such Settling Defendant(s). In no event shall the conveyance release or otherwise affect the liability of such Settling Defendant(s) 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 PERFORMING DEFENDANTS

10. a. The Performing Defendants shall perform the Work for the Site as described in this Consent Decree; in the ROD attached as Appendix A; in the SOW (which the Parties agree is consistent with the ROD) attached as Appendix B; and any modifications thereto. The ROD, the SOW, and all modifications to the SOW, are hereby incorporated by reference and made a part of this Decree. The Work shall be performed in accordance with all the provisions of this Decree, the SOW, any modifications to the SOW, and all design specifications or other plans or schedules attached to or approved pursuant to the SOW.

b. The Work includes, but is not limited to, the excavation and off-site disposal of certain materials at the Site, all or some of which may require disposal at a radiological waste disposal facility. If requested by the Performing Defendants, the Department of the Army intends to provide Disposal Services, as defined herein, for materials that are to be disposed of at a radiological waste disposal facility, as specified in a Memorandum of Agreement Between the City of Attleboro, Massachusetts and the Department of the Army (the "MOA"), attached hereto as Appendix J. The Performing Defendants shall ensure that all payments are made to the Department of the Army for Disposal Services provided under this Paragraph 10.b. Nothing in this Consent Decree shall alter the terms of the MOA.

c. In the event that the Department of the Army does not provide Disposal Services, and if requested by the Performing Defendants, EPA intends to provide the Disposal Services and, therefore, agrees to take appropriate steps to secure such services. The Performing Defendants shall pay all costs associated with EPA's provision of Disposal Services provided under this Paragraph 10.c., not inconsistent with the National Contingency Plan. These costs shall be considered Future Response Costs, except that EPA shall bill for such costs, and Performing Defendants shall pay such bill(s), prior to EPA's provision of such services. In the event that actual costs exceed the amount of the bill(s) or that any advanced funds exceed the actual costs, EPA will issue a subsequent bill to the Performing Defendants or, in the event that a refund is due, EPA will credit the amount of the refund against the amount to be paid by the Performing Defendants for any subsequent bill for Future Response Costs or Oversight Costs.

d. "Disposal Services" shall mean a government agency arranging for access to government disposal rates at a radiological waste disposal facility for off-site disposal of radioactive materials from the Site, but shall not include waste characterization, excavation, screening, sampling, packaging or transportation services.

11. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Performing Defendants pursuant to Sections VI (Performance of the Work by Performing Defendants), 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, after a reasonable opportunity for review and comment by the Commonwealth. Within 10 days after the lodging of this Consent Decree, Performing Defendants shall notify EPA and the Commonwealth in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Performing Defendants shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Performing Defendants propose to change a Supervising Contractor, Performing Defendants shall give such notice to EPA and the Commonwealth and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the Commonwealth, 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 Performing Defendants in writing. Performing Defendants shall submit to EPA and the Commonwealth a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Performing Defendants may select any contractor from that list that is not disapproved and shall notify EPA and the Commonwealth of the name of the contractor selected within 21 days of EPA's authorization to proceed. Any dispute regarding EPA's disapproval of a proposed Supervising Contractor shall be resolved pursuant to Section XIX (Dispute Resolution) of this Consent Decree.

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 Performing Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Performing Defendants may seek relief under the provisions of Section XVIII (Force Majeure) hereof.

12. Remedial Design.

a. Consistent with the deadlines provided in the SOW, Performing Defendants shall submit to EPA and the Commonwealth the deliverables required as part of the Remedial Design, as set forth in Section V of the SOW, including, but not limited to, 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. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. Consistent with the deadlines provided in the SOW, the Performing Defendants shall submit to EPA and the Commonwealth a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the Commonwealth, and submittal of the Health and Safety Plan for all field activities to EPA and the Commonwealth, Performing Defendants shall implement the

Remedial Design Work Plan. The Performing Defendants shall submit to EPA and the Commonwealth 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, Performing Defendants shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan. Upon approval by EPA of the other Remedial Design deliverables required under the SOW, Performing Defendants shall implement the activities required by such deliverables.

13. Remedial Action.

a. Consistent with the deadlines provided in the SOW, Performing Defendants shall submit to EPA and the Commonwealth the deliverables required as part of the Remedial Action, as set forth in Section VI. of the SOW, including, but not limited to, a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the portion of the remedy set forth in the ROD that is described in the SOW 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. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plan, Performing Defendants shall submit to EPA and the Commonwealth 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. The Performing Defendants shall submit to EPA for approval all other Remedial Action plans, submittals and deliverables described in the SOW, in accordance with the schedule set forth in the SOW and the approved Remedial Action Work Plan.

b. Upon approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the Commonwealth, Performing Defendants shall implement the activities required under the Remedial Action Work Plan. The Performing Defendants shall submit to EPA and the Commonwealth 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, Performing Defendants shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan. Upon approval by EPA of the other Remedial Action deliverables required under the SOW, Performing Defendants shall implement the activities required by such deliverables.

14. The Performing Defendants shall continue to implement the Remedial Action and O & M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

15. 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 shall notify the Performing Defendants in writing and 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. EPA will confer with the Performing Defendants prior to requiring a modification of the SOW or of the work plans developed pursuant thereto.

b. For the purposes of this Paragraph 15 and Paragraph 52 only, the "scope of the remedy selected in the ROD" shall mean the actions described in Section L of the ROD, including, but

not limited to, the following: (1) excavation and off-site disposal at an appropriate disposal facility of soil and sediment exceeding Performance Standards (and excluding contamination addressed or to be addressed by the United States Army Corps of Engineers pursuant to the Formerly Utilized Sites Remedial Action Program); (2) placement of clean fill in open areas to backfill to grade and/or wetlands restoration/replication, as appropriate; (3) connecting two residences to public water; (4) implementation of institutional controls; and (5) implementation of surface water, sediment and groundwater monitoring.

c. If Performing Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 71 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Performing Defendants 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.

16. Settling Defendants acknowledge and agree 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.

17. a. Performing Defendants 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.

(1) The Performing Defendants 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 Performing Defendants 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.

(2) The identity of the receiving facility and state will be determined by the Performing Defendants following the award of the contract for Remedial Action construction. The Performing Defendants shall provide the information required by Paragraph 17.a. as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-Site location, Performing Defendants shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440.

VII. REMEDY REVIEW

18. Periodic Review. Performing Defendants 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.

19. 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.

20. Opportunity to Comment. Settling Defendants 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.

21. Reserved.

22. Reserved.

VIII. Quality Assurance, Sampling, and Data Analysis

23. Performing Defendants shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance with "EPA Requirements for Quality Assurance Plans (QA/R5)" (EPA/240/B-01/003, March 2001), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), "EPA New England Quality Assurance Project Plan Program Guidance," (April 2005), and subsequent amendments to such guidelines upon notification by EPA to Performing Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any sampling or monitoring project under this Consent Decree, Performing Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the Commonwealth, a Sampling and Analysis Plan ("SAP"), which includes, among other things, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Performing Defendants shall ensure that EPA and Commonwealth personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Performing Defendants in implementing this Consent Decree. In addition, Performing Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Performing Defendants shall ensure that the laboratories they utilize 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 Organic Analysis" (Multi-Media, Multi-Concentration Organics Analysis, SOM01.1, which can be found at <http://www.epa.gov/superfund/programs/clp/som1.htm>) and the "Contract Lab Program Statement of Work for Inorganic Analysis," (Multi-Media, Multi-Concentration Inorganics Analysis, ILM05.3, which can be found at <http://www.epa.gov/superfund/programs/clp/ilm5.htm>) and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, after opportunity for review and comment by the Commonwealth, the Performing Defendants may use other analytical methods which are as stringent as or more stringent than the CLP- approved methods. Performing Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Performing Defendants shall only use laboratories that have a documented Quality System which complies with ANSI/ASQ E4-2004, "Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use," and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Performing Defendants 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 QAPP approved by EPA.

24. Upon request, the Performing Defendants shall allow split or duplicate samples to be taken by EPA and the Commonwealth or their authorized representatives. Performing Defendants shall notify EPA and the Commonwealth not less than 21 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the Commonwealth shall have the right to take any additional samples that EPA or the Commonwealth deem necessary. Upon request, EPA shall allow the Performing Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Performing Defendants' implementation of the Work, and shall provide the Performing Defendants copies of all sampling data.

25. Performing Defendants shall submit to EPA and the Commonwealth five copies (and one electronic copy) of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Performing Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees or the approved QAPP provides otherwise.

26. 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

27. 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 any of the Settling Defendants, such Settling Defendants shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States, the Commonwealth, and their 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 or the Commonwealth;
- (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) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 92 of this Consent Decree;
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information);
- (9) Assessing Settling Defendants' compliance with this Consent Decree; and
- (10) 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

implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such restrictions include, but are not limited to, (1) residential, agricultural or other uses of the Site that may present an unacceptable risk to human health shall be prohibited; (2) extraction of groundwater at the Site and at Union Road House 1 and 2 (as defined in the SOW) for consumption or any other purpose, except groundwater monitoring, shall be prohibited; (3) excavation at the Site and at the Union Road House 1 and 2 below the seasonally-high water table shall be prohibited; (4) construction of any structures at the Site shall be prohibited, unless a study is conducted to determine if vapor intrusion screening criteria are met and, as appropriate, unless construction is designed to prevent vapor intrusion; and (5) any activities that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial action shall be prohibited.

c. execute and record in the Registry of Deeds of Bristol County, Commonwealth of Massachusetts, an easement, 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 27.a of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 27.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. Such Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions 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 Commonwealth and its representatives, (iii) the other Settling Defendants and their representatives, and/or (iv) other appropriate grantees. Such Settling Defendants shall, within 45 days of entry of this Consent Decree, submit to EPA for review and approval with respect to such property:

(1) A draft easement, in substantially the form attached hereto as Appendix K, that is enforceable under the laws of the Commonwealth of Massachusetts, and

(2) a current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

Within 15 days of EPA's approval and acceptance of the easement, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Registry of Deeds or other appropriate office of Bristol County. Within 30 days of recording the easement, such Settling Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111.

28. 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 any of the Settling Defendants, Performing Defendants shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Performing Defendants, as well as for the United States on behalf of EPA, and the Commonwealth, 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 27.a of this Consent Decree;

b. an agreement, enforceable by the Performing Defendants and the United States, to abide by the obligations and restrictions established by Paragraph 27.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. the execution and recordation in the Registry of Deeds or other appropriate land records office of Bristol County, Commonwealth of Massachusetts, of an easement, 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 27.a of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 27.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 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 Commonwealth and its representatives, (iii) the other Performing Defendants and their representatives, and/or (iv) other appropriate grantees. Within 45 days of entry of this Consent Decree, Performing Defendants shall submit to EPA for review and approval with respect to such property:

(1) A draft easement, in substantially the form attached hereto as Appendix K, that is enforceable under the laws of the Commonwealth of Massachusetts, and

(2) a current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Performing Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

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

29. For purposes of Paragraphs 27 and 28 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien or encumbrance; provided, however, that the Settling Defendants shall not be required to pay any sums of money as such consideration to (a) Attleboro Landfill, Inc., Albert Dumont, any entity related to or controlled by Attleboro Landfill, Inc. and/or Albert Dumont and/or any successor-in-title to Attleboro Landfill, Inc. or Albert Dumont that is not a Bona Fide Prospective Purchaser under Section 107(r) of CERCLA, as determined by EPA (hereafter "ALI Entities"); or (b) to the United States to reimburse it pursuant to this Paragraph 29 for any sums of money paid to any ALI Entities. If (a) any access or land/water use restriction agreements required by Paragraphs 28.a or 28.b of this Consent Decree are not obtained within 45 days of the date of entry of this Consent Decree, (b) any access easements or restrictive easements required by Paragraph 28.c of this Consent Decree are not submitted to EPA in draft form within 45 days of the date of entry of this Consent Decree, or (c) Settling Defendants are unable to obtain an agreement pursuant to Paragraph 27.c.(2) or Paragraph 28.c.(2) from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the easement being created pursuant to this Consent Decree within 45 days of the date of entry of this Consent Decree, Settling Defendants shall promptly notify the United States in writing, and shall include in that

notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 27 or 28 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendants 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, or in obtaining the release or subordination of a prior lien or encumbrance. Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Payments for Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access, land/water use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

30. 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, Settling Defendants shall cooperate with EPA's and the Commonwealth's efforts to secure such governmental controls.

31. Notwithstanding any provision of this Consent Decree, the United States retains 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

32. In addition to any other requirement of this Consent Decree, Performing Defendants shall submit in electronic form to EPA and the Commonwealth (or, upon request, five (5) copies to EPA and two (2) copies to the Commonwealth) 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, or other appropriate reference to, all results of sampling and tests and all other data received or generated by Performing Defendants or their contractors or agents in the previous month required to be reported pursuant to the approved QAPP; (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 month and provide other information relating to the progress of construction, including, if requested, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Performing Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next month. Performing Defendants shall submit these progress reports to EPA and the Commonwealth by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the Performing Defendants pursuant to Paragraph 52.b of Section XIV (Certification of Completion) on Appendix I. If requested by EPA or the Commonwealth, Performing Defendants shall also provide briefings for EPA and the Commonwealth to discuss the progress of the Work.

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

34. Upon the occurrence of any event during performance of the Work that Performing Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Performing Defendants 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 1, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

35. Within 20 days of the onset of such an event, Performing Defendants shall furnish to Plaintiff and the Commonwealth a written report, signed by the Performing Defendants' 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, Performing Defendants shall submit a report setting forth all actions taken in response thereto.

36. Performing Defendants shall submit five (5) 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. Performing Defendants shall simultaneously send an electronic copy of all such plans, reports and data to the Commonwealth. Upon request by EPA Performing Defendants shall submit in electronic form all portions of any report or other deliverable Performing Defendants are required to submit pursuant to the provisions of this Consent Decree.

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

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

38. 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 Commonwealth, 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 Performing Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Performing Defendants at least one notice of deficiency and an opportunity to cure within 14 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.

39. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 38(a), (b), or (c), Performing Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their 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 38(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

40. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 38(d), Performing Defendants shall, within 14 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 14-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 41 and 42.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 38(d), Performing Defendants 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 Performing Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

41. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Performing Defendants 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. Performing Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute Resolution).

42. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Performing Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Performing Defendants invoke 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.

43. 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

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

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

46. EPA's Project Coordinator and the Performing Defendants' Project Coordinator will meet or confer, at a minimum, on a monthly basis.

XIII. FINANCIAL ASSURANCE OF ABILITY TO COMPLETE THE WORK

47. Performing Defendants shall establish and maintain financial assurance of the ability to complete the Work for the benefit of EPA in the amount of \$29,000,000 (hereafter "Estimated Cost of the Work") in one of more of the following forms, which must be satisfactory in form and substance to EPA:

- a. A surety bond 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;
- c. A trust fund;
- 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 one or more Performing Defendants satisfy the requirements of 40 C.F.R. § 264.143(f) or, with respect to any Performing Defendant that is a local government or other political subdivision of a State, that such Performing Defendant satisfies the requirements provided in Appendix L; or
- f. A guarantee to perform the Work executed by one or more of the following: (i) a direct or indirect parent company of a Performing Defendant, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with at least one Performing Defendant.

48. Performing Defendants have selected, and EPA has approved, as an initial financial assurance mechanism a trust fund pursuant to Paragraph 47, in the form attached hereto as Appendix M.

- a. Within ten days after lodging of this Consent Decree, Performing Defendants (other than the City of Attleboro) shall execute or otherwise finalize all instruments or other documents required in order to make the trust fund, in the form attached as Appendix M, legally binding, and such trust fund shall thereupon be fully effective.
- b. Within thirty days of lodging of this of this Consent Decree, Performing Defendants (other than the City of Attleboro) shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the trust fund legally binding to the EPA Regional Financial Management Officer, in accordance with Section XXVI ("Notices and Submissions") of this Consent Decree, with a copy to the United States and EPA as specified in Section XXVI.
- c. The trust fund will initially be funded in a dollar amount to be proposed by the Performing Defendants, and approved by EPA, to cover the cost of the remedial design and remedial action work that is required to be performed prior to the Completion of the FUSRAP Response Action. The Performing Defendants shall submit their proposed dollar amount of such funding to EPA within ninety days of lodging of the Consent Decree. Within twenty-one days after receiving EPA approval of the proposed amount, Performing Defendants shall submit such amount to the trust fund, along with notification to EPA that such amount has been paid.
- d. Upon Completion of the FUSRAP Response Action, the trust fund will then be funded in a dollar amount to be proposed by the Performing Defendants, and approved by EPA, to cover the remaining cost of the Work. The Performing Defendants shall submit their proposed dollar amount of such funding to EPA within ten days of Completion of the FUSRAP Response Action. At the time that the Performing Defendants submit such proposed dollar amount, they may also request that EPA allow them to provide financial assurance for the cost of the O&M phase of the Work by means of a demonstration by the City of Attleboro which shall satisfy the requirements referenced in Paragraph 47e. of this Section

XIII. EPA shall approve the said request with respect to the provision by the City of Attleboro of financial assurance for the cost of the O&M phase of the Work if it finds that the City of Attleboro satisfies the said financial demonstration requirements and that the amount of the costs proposed to be allocated to the O&M phase of the Work are appropriate. In addition to the requirements set forth in Paragraph 49 of this Section XIII regarding the provision of inadequate financial assurance, EPA's said approval shall be conditioned upon the other Performing Defendants agreeing to fund the trust fund for the remaining cost of the O&M phase of the Work if at any time in the future the City of Attleboro shall fail to satisfy the said financial demonstration requirements. Within twenty-one days after receiving EPA approval of the dollar amount proposed by the Performing Defendants, as described above (reduced, if approved by EPA, by the cost of the O&M phase of the Work if financially assured by the City of Attleboro), the Performing Defendants shall submit such amount to the trust fund, along with notification to EPA that such amount has been paid.

49. If the Performing Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 47.f of this Consent Decree, Performing Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Performing Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 47.e or 47.f, they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Performing Defendants shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 47 of this Consent Decree. Performing Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

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

51. Performing Defendants may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Performing Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), and the form of the financial assurance may be changed only in accordance with the final administrative or judicial decision resolving the dispute.

XIV. CERTIFICATION OF COMPLETION

52. Completion of the Work.

a. Within 90 days after Performing Defendants conclude that all phases of the Work (including O & M), have been fully performed, Performing Defendants shall schedule and conduct a pre-certification inspection to be attended by Performing Defendants, and EPA and the Commonwealth. If, after the pre-certification inspection, the Performing Defendants still believe that the Work has been fully performed, Performing Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Performing Defendant or the Performing Defendants' 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 Commonwealth, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Performing Defendants in writing of the activities that must be undertaken by Performing Defendants pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require Performing Defendants 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 15.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 Performing Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Performing Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

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

XV. EMERGENCY RESPONSE

53. 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 or the Former Shpack Residence Parcel that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment:

a. Performing Defendants shall, subject to Paragraph 54, 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 Performing Defendants shall notify the EPA Emergency Response Unit, Region 1. Performing Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Performing Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Performing Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs).

b. If such event is not a result of the performance of the Work, any Settling Defendant that owns any portion of the Site or the Former Shpack Residence Parcel and on whose property the release or threat of release occurs or from whose property the release or threat of release arises shall, subject to Paragraph 54, 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, such Settling Defendant shall notify the EPA Emergency Response Unit, Region 1. Such 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 such Settling Defendant fails to take appropriate response action as required by this Section, and

EPA takes such action instead, such Settling Defendant shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs).

c. If such event is not the result of the performance of the Work, and the property at which the event occurs or from which the release or threat of release arises is not owned by any of the Settling Defendants, and the event becomes known to the Performing Defendants, the Performing Defendants shall immediately notify EPA as provided in Paragraph 53.a.

54. 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 or the Former Shpack Residence Parcel, subject to Section XXI (Covenants by Plaintiff).

XVI. PAYMENTS FOR RESPONSE COSTS

A. Payments by Performing Defendants.

55. Payments by Performing Defendants for Future Response Costs and Oversight Costs.

a. Performing Defendants shall pay to EPA all Future Response Costs not inconsistent with the National Contingency Plan. Performing Defendants shall also pay up to \$2,900,000 of all Oversight Costs not inconsistent with the National Contingency Plan. On a periodic basis, which shall be annually to the extent practicable, the United States will send Performing Defendants a bill requiring payment that consists of a Region 1 standard cost summary, which is a line-item summary of costs in dollars by category of costs (including but not limited to payroll, travel, indirect costs, and contracts) incurred by EPA, DOJ, the Commonwealth, and their contractors. Performing Defendants shall make all payments within 30 days of Performing Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 56. Performing Defendants 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 01-29, and DOJ Case Number 90-11-2-08360. Performing Defendants shall send the check(s) to:

(For Delivery by First Class Mail)
U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

(For Delivery by Overnight Mail)
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

b. At the time of payment, Performing Defendants shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions), and to EPA's Cincinnati Financial Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268.

c. The total amount to be paid by Performing Defendants pursuant to Subparagraph 55.a shall be deposited in the Shpack Landfill Superfund Site Special Account within the EPA Hazardous

Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

56. Performing Defendants may contest payment of any Future Response Costs or Oversight Costs under Paragraph 55 if they determine that the United States has made an accounting error or if they allege 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 or Oversight Costs and the basis for objection. In the event of an objection, the Performing Defendants shall within the 30 day period pay all uncontested Future Response Costs or Oversight Costs to the United States in the manner described in Paragraph 55. Simultaneously, the Performing Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the Commonwealth of Massachusetts and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs or Oversight Costs. The Performing Defendants 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 or Oversight 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 Performing Defendants 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 Performing Defendants shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 55. If the Performing Defendants prevail concerning any aspect of the contested costs, the Performing Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States; Performing Defendants 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 Performing Defendants' obligation to reimburse the United States for its Future Response Costs or Oversight Costs.

57. In the event that the payments required by Paragraph 55 are not made within 30 days of the Performing Defendants' receipt of the bill, Performing Defendants shall pay Interest on the unpaid balance. The Interest on Future Response Costs or Oversight Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Performing Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Performing Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 75. The Performing Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 55.

B. Reimbursement of Cost Increases Due to the Presence of Radiological Contamination

58. a. Payments. Texas Instruments, Inc., BASF Catalysts LLC and/or any other Performing Defendant(s) shall pay for any Radiological Cost Increase. Settling Federal Agencies shall reimburse Texas Instruments, Inc. and BASF Catalysts LLC, and/or any other Performing Defendant(s) that have paid for any Radiological Cost Increase only after Texas Instruments, Inc. and BASF Catalysts LLC and/or any such Performing Defendant(s) jointly submit to the United States a Complete Invoice that includes an accounting of the claimed Radiological Cost Increase. Subject to the provisions set forth below, the United States shall reimburse Texas Instruments, Inc., BASF Catalysts LLC, and/or any other Performing Defendant(s) fifty percent (50%) of any Radiological Cost Increase paid by Texas Instruments, Inc., BASF Catalysts LLC and/or any other Performing Defendant(s) identified in a Complete Invoice. The United States, Texas Instruments, Inc. and BASF Catalysts LLC, collectively, shall pay 100% of any Radiological Cost Increase. The United States shall make its payments as soon as reasonably practicable after the date a Complete

Invoice for Radiological Cost Increases is received. Payments will be made by the United States under the following terms and schedule:

- (1) For purposes of this Decree, the only costs eligible for reimbursement under this Paragraph are those necessary costs of response, as defined in 42 U.S.C. § 9601(25), paid by Performing Defendants which are consistent with the National Contingency Plan and arise out of or in connection with any releases or threatened releases of hazardous substances at or emanating from the Site. The United States and Performing Defendants shall have an opportunity to consult regarding which costs are eligible for reimbursement. Such opportunity to consult shall be informal, and non-binding.
- (2) A Complete Invoice for Radiological Cost Increases shall be submitted to the United States as provided in Section XXVI (Notices and Submissions) no more frequently than semi-annually. The Performing Defendants shall submit all Radiological Cost Increases within one year after the date on which those costs were paid. The United States shall not be responsible for payment of any Radiological Cost Increase that has not been submitted to the United States in Complete Invoices within one year of the date on which such costs were paid.
- (3) Submission of a Complete Invoice shall be in an organized fashion with a document summarizing the contents of the Complete Invoice and total monetary amount claimed. Notwithstanding any other provision in this Consent Decree, if the Performing Defendants reasonably anticipate submitting a Complete Invoice for payment of Radiological Cost Increases in excess of \$500,000, Performing Defendants shall notify the United States in writing at least 30 calendar days before submitting such Complete Invoice.

b. Definitions.

- (1) "Radiological Cost Increase" and "Radiological Cost Increases" shall mean any increased cost of the Work caused by the presence of Radium and/or Uranium concentrations above Background Levels (a) in the material to be disposed of or (b) at the Site. Background Levels shall mean: Total Uranium concentrations up to and including 1.77 mg/kg, Radium-226 concentrations up to and including 0.55 pCi/g, Uranium-234 concentrations up to and including 0.59 pCi/g, Uranium-235 concentrations up to and including 0.03 pCi/g, or Uranium-238 concentrations up to and including 0.59 pCi/g in soil or sediment at the Site. All Radiological Cost Increase and Radiological Cost Increases shall be fully identified, documented and justified in accordance with Paragraph 58 (b)(2) below. The Radiological Cost Increase shall be the sum of the following amounts:
 - (A) Increased Costs of Chemical Disposal. Increased Costs of Chemical Disposal shall mean all increased costs of sampling, characterizing, managing, handling, storing, packaging, transporting and disposing of material that exceeds ROD cleanup criteria for chemical waste, caused by the presence of Radium and/or Uranium above Background Levels in such material or at the Site.
 - (B) Surveying Costs. Surveying Costs shall mean the cost of conducting additional sampling and analysis the purpose of which is to further delineate concentrations of Radium and/or Uranium at the Site, including, without limitation, sampling and analyses for radionuclides in groundwater required under the terms of the SOW.

- (C) Health and Safety Costs. Health and Safety Costs shall mean costs for all radiological health and safety measures and monitoring, including costs for any necessary additional radiological health and safety training;
- (D) Radium and Uranium Disposal Costs. Radium and Uranium Disposal Costs shall mean all costs related to sampling, characterizing, managing, handling, storing, packaging, transporting and disposing of material containing non-segregable concentrations of Radium-226 in excess of 3.1 pCi/g, concentrations of Uranium-234 in excess of 220 pCi/g, concentrations of Uranium-235 in excess of 52 pCi/g, or concentrations of Uranium-238 in excess of 110 pCi/g, when such sampling, characterizing, managing, handling, storing, packaging, transporting and disposing of material is required by Section 1 of the SOW.
- (E) Other Documented Costs. Other documented costs which are directly attributed to and would not be incurred but for the presence of Radium and/or Uranium above Background Levels at the Site.

(2) A Complete Invoice is defined as and shall consist of:

- (A) a certification under penalty of perjury by Texas Instruments, Inc., BASF Catalysts LLC and any other Performing Defendant submitting an invoice stating:

“The [parties submitting the invoice] certify that (a) all of the costs referenced in the attached Complete Invoice are Radiological Cost Increases as defined by the Consent Decree Regarding Shpack Landfill Superfund Site that was entered by the court on [INSERT ENTRY DATE], (b) all of those costs have been paid in full, (c) with the exception of Disposal Services provided by either the Corps or EPA under Paragraph 10.b or 10.c of this Consent Decree, as the case may be, and/or costs for which the Corps is reimbursed under Article VI of the MOA, attached as Appendix J, the costs were not previously paid by the United States, (d) the costs were not included in any prior invoice, and (e) the costs were not paid from another source, including contract or insurance. Payment, including partial payment, by the United States of Radiological Cost Increases in this Complete Invoice, together with any interest that has accrued under this Consent Decree, shall be accepted by the Performing Defendants in accordance with the Consent Decree for the period covered by and referenced in the attached Complete Invoice in satisfaction of the Radiological Cost Increases covered by such payments.”;
- (B) an itemized description of the nature, location, purpose, and scope of the work performed and all of the costs incurred, along with such documentation to enable the United States to determine that the costs are a Radiological Cost Increase;
- (C) waste characterization data sufficient to document that the material whose disposal necessitates the claimed Radiological Cost Increase contains elevated radiological activity above Background Levels;
- (D) copies of invoices and other documents supporting the claimed costs. The parties submitting the invoices, in order to give context to the invoices, shall

also provide a narrative description of the tasks performed in exchange for each cost, unless such invoices, or the description provided under subparagraph (b)(2)(B) above adequately describe the tasks performed; and

- (E) adequate proof of payment of all of the Radiological Cost Increases included in the Complete Invoice.

c. Disputes. If disputes arise as to the amount of any Radiological Cost Increase, and/or the sufficiency or completeness of a Complete Invoice, the dispute shall be resolved through application of the dispute resolution procedures set forth in this Paragraph. If the United States objects to paying a Complete Invoice or a portion thereof, it shall notify the parties submitting the Complete Invoice, as well as a designated representative of Performing Defendants, of its objection(s) within 30 days of the date the Complete Invoice is received. If the United States fails to notify said parties of its objection(s) within this 30 day period, it shall pay its designated share of the Complete Invoice consistent with this Paragraph 58, including applicable Interest.

If, after a good faith review of a Complete Invoice, the United States timely objects to only a portion of a Complete Invoice, it shall pay its share of the undisputed portion of the Complete Invoice consistent with this Paragraph 58, including any applicable Interest. The United States shall specify with particularity its reason(s) for objecting to a Complete Invoice or portion thereof.

Within 15 business days after the United States submits an objection to a Complete Invoice, representatives of the United States and the parties submitting the invoices with authority to recommend appropriate resolution of the dispute shall meet and confer in good faith in an effort to resolve the dispute informally. The United States shall pay its share of the sum as to which the dispute is informally resolved consistent with this Paragraph 58, including any applicable Interest.

If the dispute is not fully resolved with the 15 business day meet and confer period (or such longer time period as is mutually agreeable to the parties to the dispute), the United States may, within 20 business days after the close of the meet and confer period, submit the dispute to the Court for resolution. If the United States fails to submit the dispute to the Court within 20 business days after the close of the meet and confer period, the United States shall pay its share of the Complete Invoice consistent with this Paragraph 58, including any applicable Interest.

If the dispute is timely submitted to the Court, the burden shall be upon the parties submitting the invoice to establish, by a preponderance of the evidence, that the Complete Invoice is in compliance with this Paragraph 58. In such a proceeding, all Performing Defendants (whether or not they shall be the parties submitting the invoice) shall be entitled to present evidence and arguments relating to whether the invoice being disputed constitutes a Complete Invoice and/or whether the costs reflected in it constitute a Radiological Cost Increase.

The United States shall pay its share of any sums that the Court determines are part of the Radiological Cost Increase consistent with this Paragraph 58, plus Interest beginning on the 60th day following the United States' initial receipt of the Complete Invoice through the date of payment.

59. The United States shall pay Interest on Radiological Cost Increases if payment on any Complete Invoice is not made within one hundred and twenty (120) days after the date of receipt of the Complete Invoice. Such late payment Interest shall begin to accrue on any unpaid balance on the one hundred and twenty first (121st) calendar day after the date of receipt of the Complete Invoice. Any unpaid Interest that accrued on any prior invoice may be included in a future Complete Invoice. The United States may tender, and Performing Defendants must accept, partial payment of a Complete Invoice, subject to dispute resolution procedures in Paragraph 58.c.

60. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of the Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a

commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

XVII. INDEMNIFICATION AND INSURANCE

61. Settling Defendants' 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 Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Performing Defendants shall indemnify, save and hold harmless the United States (with the exception of the Settling Federal Agencies) 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 Performing Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Owner Settling Defendants shall indemnify, save and hold harmless the United States (with the exception of the Settling Federal Agencies) 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 Owner Settling Defendants, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Performing Defendants, or as applicable Owner Settling Defendants, agree to pay the United States (with the exception of the Settling Federal Agencies) 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 Performing Defendants, or as applicable Owner Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Except as provided in Paragraph 10.b or 10.c of this Consent Decree, the United States shall not be held out as a party to any contract entered into by or on behalf of Performing Defendants in carrying out activities pursuant to this Consent Decree. Neither the Performing Defendants nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Performing Defendants, or as applicable Owner Settling Defendants, notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 61, and shall consult with Performing Defendants, or as applicable Owner Settling Defendants, prior to settling such claim.

62. Performing Defendants waive 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 any one or more of Performing Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Performing Defendants 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 any one or more of Performing Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

63. No later than 15 days before commencing any on-site Work, Performing Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Work pursuant to Subparagraph 52.b of Section XIV (Certification of Completion) of Appendix I, comprehensive general liability insurance with limits of two million dollars, combined single limit, and automobile liability insurance with limits of two million dollars, combined single limit, naming the United States as an additional

insured. In addition, for the duration of this Consent Decree, Performing Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Performing Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Performing Defendants shall provide to EPA certificates of such insurance and, if so requested by EPA, a copy of each insurance policy. Performing Defendants shall resubmit such certificates and, if so requested by EPA, copies of policies each year on the anniversary of the Effective Date. If Performing Defendants demonstrate 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, Performing Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

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

65. 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 Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation & Restoration, EPA Region 1, within 48-hours of when Settling Defendants first knew that the event might cause a delay. Within seven days thereafter, Settling Defendants shall provide in writing to EPA and the Commonwealth 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 Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants 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. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

66. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, 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, after a reasonable opportunity for review and comment by the Commonwealth, 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, after a reasonable opportunity for review and comment by the Commonwealth, 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 Defendants in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, agrees that the delay is attributable to a force majeure event, EPA will

notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

67. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure 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 Settling Defendants complied with the requirements of Paragraphs 64 and 65, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

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

69. 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.

70. 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 14 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States 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 Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 71 or Paragraph 72.

b. Within 14 days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 71 or 72. Within 14 days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 71 or 72, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 71 and 72.

71. 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 Settling Defendants regarding the validity of the ROD's provisions, except as provided in Paragraph 96.

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 Settling Defendants or EPA.

b. The Director of the Office of Site Remediation & Restoration, EPA Region 1, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 71.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 71.c and d.

c. Any administrative decision made by EPA pursuant to Paragraph 71.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within 20 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Director of the Office of Site Remediation & Restoration 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 71.a.

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

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 70, the Director of the Office of Site Remediation & Restoration, EPA Region 1 will issue a final decision resolving the dispute. The decision of the Director of the Office of Site Remediation & Restoration shall be binding on the Settling Defendants unless, within 20 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Notwithstanding Paragraph 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.

73. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 82. 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 Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

74. Performing Defendants shall be jointly and severally liable for stipulated penalties in the amounts set forth in Paragraphs 75 and 76 to the United States for failure to comply with the requirements of

this Consent Decree specified below, (excepting, however, the requirements solely applicable to the Owner Settling Defendants) unless excused under Section XVIII (Force Majeure). Owner Settling Defendants shall be individually liable for stipulated penalties in the amounts set forth in Paragraph 75 and 76 to the United States for failure to comply with the requirements applicable to the Owner Settling Defendants under this Consent Decree as specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by Settling Defendants 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.

75. The following stipulated penalties shall accrue per violation per day for any noncompliance except those identified in Paragraph 76 :

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 2,500	1st through 14th day
\$ 5,000	15th through 30th day
\$ 7,500	31st day and beyond

76. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports pursuant to Section X of the Consent Decree:

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

77. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 92 of Section XXI (Covenants by Plaintiffs), Performing Defendants shall be liable for a stipulated penalty in the amount of \$1,000,000.

78. 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 Performing Defendants or the Owner Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Office of Site Remediation & Restoration, EPA Region 1, under Paragraph 71.b or 72.a of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Performing Defendants' or the Owner Settling Defendants' 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.

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

Paragraph regardless of whether EPA has notified the Performing Defendants or the Owner Settling Defendants of a violation.

80. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the Performing Defendants' or the Owner Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Performing Defendants or Owner Settling Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to:

(For Delivery by First Class Mail)
U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

(For Delivery by Overnight Mail)
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Each payment shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID # 01-29, the DOJ Case Number 90-11-2-08360, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVI (Notices and Submissions), and to EPA's Cincinnati Financial Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268.

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

82. Penalties shall continue to accrue as provided in Paragraph 78 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, Performing Defendants or Owner Settling Defendants, as applicable, 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, Performing Defendants or Owner Settling Defendants, as applicable, 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 Performing Defendants or Owner Settling Defendants, as applicable, to the extent that they prevail, or as otherwise directed by the Court.

83. If Performing Defendants or Owner Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as Interest. Such non-

compliant Performing Defendants or Owner Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 80. Interest on any unpaid balance due to the United States shall accrue at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607.

84. 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 Settling Defendants' 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.

85. 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 BY PLAINTIFF

86. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraph 91 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA for performance of the Work and for recovery of Past Response Costs, Oversight Costs and Future Response Costs. These covenants not to sue shall take effect upon entry of this Consent Decree and are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree, including, but not limited to, payment of Future Response Costs and Oversight Costs pursuant to Section XVI. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

87. In consideration of the payments that will be made by the Settling Federal Agencies under the terms of the Consent Decree, and except as specifically provided in Paragraph 91 of this Section, EPA covenants not to take administrative action against the Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA for performance of the Work and for recovery of Past Response Costs, Oversight Costs and Future Response Costs. EPA's covenants shall take effect upon entry of this Consent Decree and are conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. EPA's covenant extends only to the Settling Federal Agencies and does not extend to any other person.

88. Reserved.

89. Reserved.

90. Reserved.

91. General reservations of rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants, and EPA and the federal natural resource trustees reserve, and this Consent Decree is without prejudice to, all rights against the Settling Federal Agencies, with respect to all matters not expressly included within Plaintiff's covenants in Paragraphs 86 and 87. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants, and EPA and the federal natural resource trustees reserve all rights against the Settling Federal Agencies, with respect to:

- a. claims based on a failure by Settling Defendants or the Settling Federal Agencies to comply with the requirements of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

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

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;

g. liability, prior to the certification of completion of the Work, for additional response actions that EPA determines are necessary to achieve the Performance Standards, but that cannot be required pursuant to Paragraph 15 (Modification of the SOW or Related Work Plans); and

h. liability for costs incurred or to be incurred by the United States pursuant to the Formerly Utilized Sites Remedial Action Program and related to the Site.

92. Work Takeover

a. In the event EPA determines that Performing Defendants have (i) ceased implementation of any portion of the Work, or (ii) are seriously or repeatedly deficient or late in their performance of the Work, or (iii) are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to the Performing Defendants. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Performing Defendants 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 the previous Paragraph, Performing Defendants have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portions of the Work as EPA deems necessary ("Work Takeover"). EPA shall notify Performing Defendants in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph.

c. Performing Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 71, to dispute EPA's implementation of a Work Takeover under the previous Paragraph. However, notwithstanding Performing Defendants' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 92.b until the earlier of (i) the date that Performing Defendants remedy, 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 71.b, 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 financial assurance(s) provided pursuant to Section XIII of this Consent Decree, in accordance with the provisions of that Section. If and to the extent that EPA is unable to secure the resources provided under any such financial assurance(s) and the Performing Defendant(s) fail to remit a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed, any unreimbursed costs incurred by EPA in performing Work under the Work Takeover shall be considered Future Response Costs that Performing Defendants shall pay pursuant to Section XVI (Payments for Response Costs).

93. 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 DEFENDANTS AND SETTLING FEDERAL AGENCIES

94. Covenant Not to Sue by Settling Defendants. Subject to the reservations in this Paragraph 94, Paragraph 96 and Paragraph 97, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Work, Oversight Costs, Radiological Cost Increases, past EPA response actions, and Past Response Costs 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 Massachusetts 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.

Except as provided in Paragraph 99 (Waiver of Claims Against Certain MSW Parties) and Paragraph 105 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 91 (b) - (d) or (g), but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

95. Covenants by Settling Federal Agencies. Settling Federal Agencies hereby agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law with respect to the Work, Oversight Costs, Radiological Cost Increases, past EPA response actions and Past Response Costs and Future Response Costs as defined herein or this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300), except that Settling Federal Agencies agree not to assert any such demand for costs incurred pursuant to the Formerly Utilized Sites Remedial Action Program. Furthermore, this covenant does not preclude the United States from seeking recovery (other than claims against the Hazardous Substance Superfund) of costs incurred under the Formerly Utilized Sites Remedial Action Program related to the Site, or for contribution with respect to such costs.

96. FUSRAP Response Action. The Parties recognize that the Army Corps is currently performing the FUSRAP Response Action at the Site, and further agree as follows:

- a. Notwithstanding any other provisions of this Consent Decree, and except as provided in this Paragraph 96, nothing in this Consent Decree is intended to restrict any party's rights with respect to the FUSRAP Response Action, which is not intended to be a subject of this Consent Decree;
- b. Settling Defendants expressly reserve all claims and defenses with respect to the FUSRAP Response Action, except that Settling Defendants may not challenge procedural or substantive aspects of the selection and implementation of the FUSRAP Response Action unless the United States brings a cause of action against them for the costs of the FUSRAP Response Action. In the event that Settling Defendants do challenge procedural or substantive aspects of the selection and implementation of the FUSRAP Response Action, such challenges are limited to those claims that arise from the same response action, response costs, or damages that the United States is seeking. The United States reserves any and all defenses;

c. In the event that Performing Defendants incur response costs under Paragraph 58.b(1)(D) of the Decree, Settling Defendants expressly reserve claims for contribution under Section 113(f) of CERCLA, and any defenses, for such costs;

d. Nothing in this Paragraph shall alter any applicable principles of law, timeliness, or standards regarding judicial review of any action brought by the United States or Settling Defendants.

97. The Settling Defendants reserve, and this Consent Decree is without prejudice to: (a), 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 Defendants' 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; and (b) contribution claims against the Settling Federal Agencies in the event any claim is asserted by the United States against the Settling Defendants under the authority of or under Paragraph 91(b) - (d) or (g) of Section XXI (Covenants by Plaintiff), but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claim of the United States against Settling Defendants.

98. 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).

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

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

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

101. Except as provided in Paragraph 99 (Waiver of Claims Against Certain MSW 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 99 (Waiver of Claims Against Certain MSW 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.

102. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants and the Settling Federal Agencies are entitled, as of the Effective Date of the Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and any other applicable law, for matters addressed in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs, Future Response Costs, Oversight Costs, Radiological Cost Increases, and the Work, as all of these terms are defined herein. The "matters addressed" in this settlement do not include any claims or rights reserved by the Settling Defendants, or those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree). The "matters addressed" in this settlement also do not include any costs incurred or response actions performed by the United States at the Site pursuant to the Formerly Utilized Sites Remedial Action Program or any payments made or to be made by Settling Defendants to reimburse the United States for Formerly Utilized Sites Remedial Action Program costs.

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

104. The Settling Defendants also agree that with respect to any suit or claim for cost recovery or contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 20 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within 20 days of service or receipt of any Motion for Summary Judgment and within 20 days of receipt of any order from a court setting a case for trial.

105. 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, Settling Defendants 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 by Plaintiff).

XXIV. ACCESS TO INFORMATION

106. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work.

107. Business Confidential and Privileged Documents.

a. Settling Defendants 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 Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Settling Defendants 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 Defendants assert such a privilege in lieu of providing documents, they 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 Settling Defendants. 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.

108. 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

109. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 52.b of Section XIV (Certification of Completion of the Work) of Appendix I, each Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate to its liability under CERCLA with respect to the Site, provided, however, that Settling Defendants who are potentially liable as owners or operators of the Site must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Each Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

110. The United States acknowledges that each Settling Federal Agency (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has certified 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.

111. At the conclusion of this document retention period, Settling Defendants 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, Settling Defendants shall deliver any such records or documents to EPA. The Settling Defendants 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 Defendants assert such a privilege, they 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 Settling Defendants. 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.

112. 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 (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XXVI. NOTICES AND SUBMISSIONS

113. 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, the Settling Federal Agencies, and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-08360

and

Chief, Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
Re: DJ # 90-11-2-05454/1

and

James T. Owens, Director
Office of Site Remediation & Restoration
United States Environmental Protection Agency
Region 1
1 Congress Street, Suite 1100 (HIO)
Boston, MA 02114-2023

As to EPA:

Melissa G. Taylor
EPA Project Coordinator
United States Environmental Protection Agency
Region 1
1 Congress Street, Suite 1100 (HBO)
Boston, MA 02114-2023

As to the Regional Financial
Management Officer:

David Tornstrom
United States Environmental Protection Agency
Region 1
1 Congress Street, Suite 1100 (MCO)
Boston, MA 02114-2023

As to the Regional Financial
Assurance Specialist:

John L. Shanahan, Jr.
United States Environmental Protection Agency
Region 1
1 Congress Street, Suite 1100 (HBS)

Boston, MA 02114-2023

As to the Performing Defendants:

Michael P. Last, Esquire
Counsel
Rackemann, Sawyer & Brewster
160 Federal Street
Boston, MA 02110

As to the Owner Settling Defendants:

[Name]
[Address]

In addition, all submissions to the Commonwealth shall be sent to:

Gary Waldeck
MassDEP - Bureau of Waste Site Cleanup
One Winter St.
Boston, MA 02108

XXVII. EFFECTIVE DATE

114. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered, or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XXVIII. RETENTION OF JURISDICTION

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

XXIX. APPENDICES

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

"Appendix A" is the ROD.

"Appendix B" is the SOW.

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

"Appendix D" is the description of the Former Shpack Residence Parcel.

"Appendix E" is the complete list of the Owner Settling Defendants.

"Appendix F" is the complete list of the Performing Settling Defendants.

"Appendix G" is the complete list of the Non-Owner Settling Defendants.

"Appendix H" is the complete list of the Settling Federal Agencies.

"Appendix I" contains those paragraphs that shall replace Paragraphs 21, 22, 52, 86, 87, 88, 89, 90, 91, 94, 95 and 102 of the Consent Decree on the date that EPA issues written notice to the Performing Defendants of the Completion of the FUSRAP Response Action, as provided in Paragraph 120 of the Consent Decree.

"Appendix J" is the Memorandum of Agreement referred to in Paragraph 10.b.

"Appendix K" is the draft easement.

"Appendix L" is the criteria for Financial Assurance by the City of Attleboro.

"Appendix M" is the Declaration of Trust.

XXX. COMMUNITY RELATIONS

117. Performing Defendants shall propose to EPA their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Performing Defendants under the Plan. Performing Defendants shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Performing Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXI. MODIFICATION

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

119. Except as provided in Paragraph 15 (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, Performing Defendants, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435(c)(2)(B)(ii). Prior to providing its approval to any modification, the United States will provide the Commonwealth with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document, or material modifications to the SOW that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435(c)(2)(B)(ii), may be made by written agreement between EPA, after providing the Commonwealth with a reasonable opportunity to review and comment on the proposed modification, and the Performing Defendants.

120. The Parties agree, and the Court by approving this Consent Decree so orders, that on the date that EPA issues written notice to the Performing Defendants of the Completion of the FUSRAP Response Action, Paragraphs 21, 22, 52, 86, 87, 88, 89, 90, 91, 94, 95 and 102 of the Consent Decree shall automatically, and without the need for further action by any Party or for approval by the Court, be replaced with Paragraphs 21, 22, 52, 86, 87, 88, 89, 90, 91, 94, 95 and 102 as provided in Appendix I of this Consent Decree.

121. 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

122. 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. Settling Defendants consent to the entry of this Consent Decree without further notice.

123. 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

124. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice on behalf of the United States 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.

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

126. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XXXIV. FINAL JUDGMENT

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

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


SO ORDERED THIS __ DAY OF ____, 20__.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Attleboro, Massachusetts, et al., relating to the Shpack Superfund Site.

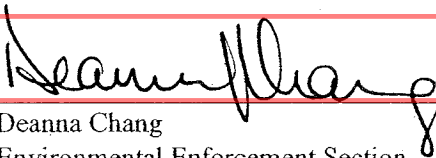
FOR THE UNITED STATES OF AMERICA

11/6/08
Date



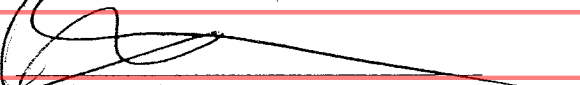
Michael Guzman
Principal Deputy Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

12/2/08
Date



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

12/5/08
Date



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

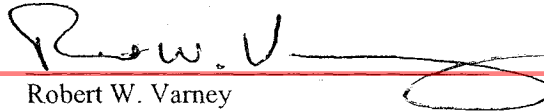
Date

George B. Henderson
Assistant United States Attorney
District of Massachusetts
U.S. Department of Justice
1 Courthouse Way # 9200
Boston, MA 02210

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Attleboro, Massachusetts, et al., relating to the Shpack Superfund Site.

6/30/08

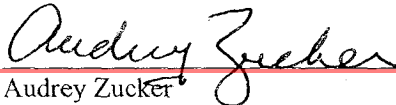
Date

A handwritten signature in black ink, enclosed in a red rectangular box. The signature appears to be "R. W. Varney" with a stylized flourish at the end.

Robert W. Varney
Regional Administrator, Region 1
U.S. Environmental Protection Agency
1 Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023

6/27/08

Date

A handwritten signature in black ink, enclosed in a red rectangular box. The signature appears to be "Audrey Zucker" in a cursive script.

Audrey Zucker
Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region 1
1 Congress Street, Suite 1100 (SES)
Boston, MA 02114-2023

~~FOR XXXXXXXXXXXXXXXXXX COMPANY INC XXX~~
CITY OF ATTLEBORO, MASSACHUSETTS

[Handwritten signature]

Address: 77 Park Street
Attleboro, MA 02703

Ph. Number:

45

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Attleboro, Massachusetts, et al., relating to the Shpack Superfund Site.

FOR _____ COMPANY, INC. */

Avnet, Inc.

June 13, 2008

Date

Signature:



Name (print):

David R. Birk

Title:

Senior Vice President

Address:

2211 South 47th Street

Phoenix, AZ 85034

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

Name (print):

Stephen W. Earp

Title:

Smith Moore LLP

Address:

300 North Greene Street

Suite 1400

Greensboro, NC 27401

Ph. Number:

336-378-5200

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Attleboro, Massachusetts, et al., relating to the Shpack Superfund Site.

FOR _____ COMPANY, INC. */

Bank of America, N.A. Trustee v/w of Lloyd G. Balfour

June 13, 2008
Date

Signature:

Name (print):

Title:

Address:

Kim Igoo Kasper
Kim Igoo Kasper
Senior Vice President
100 Federal St MS 1001601
Boston, MA 02110

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

Name (print):

Title:

Address:

Ph. Number:

Sarah H. Broughel
Choate, Hall & Stewart LLP
2 International Place
Boston, MA 02110
(617) 248-5270

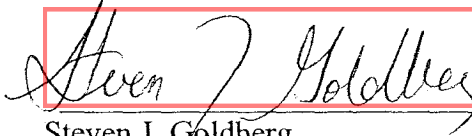
*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Attleboro, Massachusetts, et al., relating to the Shpack Superfund Site.

For: **BASF Catalysts LLC (f/k/a Engelhard Corporation)**

Date: 6/9/08

Signature:

A handwritten signature in black ink, appearing to read "Steven J. Goldberg", is enclosed within a red rectangular box.

Name:

Steven J. Goldberg

Title:

Vice President and Associate General Counsel

BASF Corporation

100 Campus Drive

Florham Park, NJ 07932

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

Name: Nan Bernardo

Firm/Company: BASF Catalysts LLC (f/k/a Engelhard Corporation)

Address: 100 Campus Drive, Florham Park, New Jersey 07932

Telephone Number: 973-245-6051

Facsimile Number: 973-245-6712

Email Address: nan.bernardo@basf.com

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Attleboro, Massachusetts, et al., relating to the Shpack Superfund Site.

FOR _____ COMPANY, INC. */
Chevron Environmental Management Company,
for itself and on behalf of Kewanee Industries, Inc.

6/2/08
Date

Signature: Robert R. John
Name (print): Robert R. John
Title: Assistant Secretary
Address: 6001 Bollinger Canyon Road
San Ramon, CA 94583

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

Name (print): Corporation Service Company
Title: _____
Address: 84 State Street
Boston, MA 02109
Ph. Number: 800-222-2122

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Attleboro, Massachusetts, et al., relating to the Shpack Superfund Site.

FOR Conoco Phillips COMPANY, ~~DEC~~ */

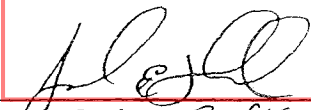
6/6/2008
Date

Signature:

Name (print):

Title:

Address:

 ⁵² WJL
JOSEPH E. SKOPAK
MANAGER - RISK MANAGEMENT & COMPLIANCE
420 S. Kender
Bartlesville OK 74004

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

Name (print):

Title:

Address:

Ph. Number:

US Corporation Company
84 State Street
Boston, MA 02109

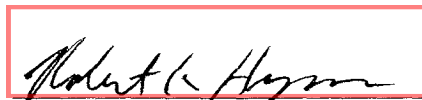
*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Attleboro, Massachusetts, et al., relating to the Shpack Superfund Site.

FOR HANDY & HARMAN

6/13/08
Date

Signature:



Name (print): Robert K. Hynes

Title: Vice President and CFO

Address: 1133 Westchester Avenue
Suite N222
White Plains, NY 10604

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

Name (print): Peter T. Gelfman

Title: General Counsel and Secretary
of Handy & Harman

Address: 1133 Westchester Avenue
Suite N222
White Plains, NY 10604

Ph. Number: (914) 461-1274

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Attleboro, Massachusetts, et al., relating to the Shpack Superfund Site.

FOR COMPANY, INC. */

International Paper

6/18/08
Date

Signature:

Maura A. Smith

Name (print):

Maura A. Smith

Title:

Senior Vice President, General Counsel & Corporate Secretary

Address:

6400 Poplar Ave
Memphis, TN 38197

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

Name (print):

Brian E. Heim

Title:

Senior Counsel - EHS & Sustainability

Address:

6400 Poplar Ave
Memphis, TN 38197

Ph. Number:


901-419-3824

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Attleboro, Massachusetts, et al., relating to the Shpack Superfund Site.

FOR KIK Custom Products, Inc.
COMPANY, INC. */

June 11-08
Date

Signature:  x
Name (print): Jim Rodd
Title: CEO
Address: 101 MacIntosh Blvd.
Concord, Ontario
L4K 4R5

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

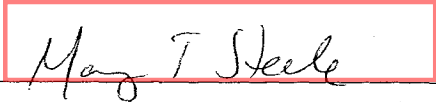
Name (print): Jonathan A. Murphy
Title: Attorney for KIK Custom Products, Inc.
Address: Lester Schwab Katz & Dwyer, LLP
120 Broadway
New York, N.Y. 10271
Ph. Number: 212-341-4206

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Attleboro, Massachusetts, et al., relating to the Shpack Superfund Site.

FOR Town of Norton, Massachusetts

June 12, 2008
Date

Signature: 

Name (print): Mary T. Steele

Title: Chairman, Board of Selectmen

Address: Norton Municipal Center

70 East Main Street

Norton, MA 02766

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

Name (print): Kopelman and Paige, P.C.

Title: Town Counsel

Address: 101 Arch Street, 12th Floor

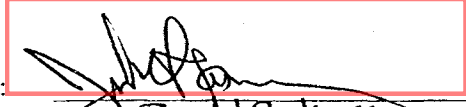
Boston, Massachusetts 02110

Ph. Number: (617) 556-0007

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Attleboro, Massachusetts, et al., relating to the Shpack Superfund Site.

FOR Swank, ~~REDACTED~~ COMPANY INC. */

6/6/2008
Date

Signature: 

Name (print):

Title:

Address:

Jerold R. Kassner

Executive Vice President

656 Joseph Warner Blvd.

Taunton, MA 02780

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

Name (print):

Title:

Address:

Ph. Number:

Lee Henig-Elona, Esq.

Attorney

Wolff + Samson PC

One Boland Dr.

West Orange NJ 07052

973 530 2178

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Attleboro, Massachusetts, et al., relating to the Shpack Superfund Site.

FOR Telxon App Corp COMPANY, INC. */

6/6/08
Date

Signature:

Name (print):

Title:

Address:

Jonathan D. Fain
JONATHAN D. FAIR
President
Telxon App Company
505 Central Ave
Pawtucket, RI 02861

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

Name (print):

Title:

Address:

Ph. Number:

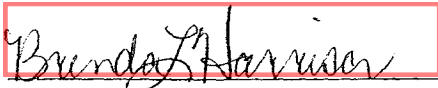
Bret Tedele, ESQ
Chase, Rutenbergs + Freedman
One Park Row, Suite 300
Providence, RI 02903
401-453-6400 x27

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Attleboro, Massachusetts, et al., relating to the Shpack Superfund Site.

FOR _____ COMPANY, INC. */
Texas Instruments Incorporated

6/12/08
Date

Signature: 
Name (print): Brenda L. Harrison
Title: Vice President
Address: 13542 North Central Expressway
MS 396
Dallas, Texas 75243

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

Name (print): Joseph F. Hubach
Title: General Counsel
Address: 7839 Churchill Way
MS 3999
Dallas, Texas 75251
Ph. Number: _____

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

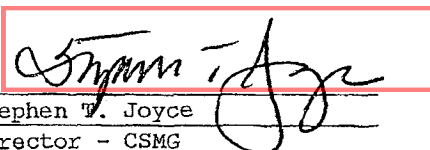
Agent for service in MA:

CT Corporation System
155 Federal Street
Suite 700
Boston, MA 02110

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Attleboro, Massachusetts, et al., relating to the Shipack Superfund Site.

FOR ~~XXXXXXXXXXXX~~
WASTE MANAGEMENT OF MASSACHUSETTS, INC.

6/20/08
Date

Signature: 
Name (print): Stephen T. Joyce
Title: Director - CSMG
Address: Waste Management
4 Liberty Lane West
Hampton, NH 03842

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

Name (print): Roy P. Giarrusso
Title: Attorney
Address: Giarrusso, Norton, Cooley & McGlone
Marina Bay
308 Victory Road
Ph. Number: Quincy, MA 02171
617-770-2900

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.