

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA
Plaintiff,

v.

Cambrex Corporation; Nepera, Inc.;
Warner-Lambert Company LLC; and
Pfizer, Inc.

Defendants.

CIVIL ACTION NO. _____

CONSENT DECREE FOR REMEDIAL DESIGN/REMEDIAL ACTION

I. BACKGROUND

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

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Nepera Chemical Company Superfund Site, Town of Hamptonburgh, Orange County, New York, 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 State of New York (the “State”) on September 28, 2007, of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Fish and Wildlife Service and the National Oceanic and Atmospheric Administration on September 28, 2007, 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 liability to 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.

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, Nepera, Inc. and Warner-Lambert Company commenced a Remedial Investigation and Feasibility Study (“RI/FS”) for the Site, subject to oversight by the New York State Department of Environmental Conservation in 1992. EPA approved a Remedial Investigation (“RI”) Report on June 16, 2006 and, as modified by an EPA comment letter dated May 4, 2007, EPA approved a Feasibility Study (“FS”) Report on June 26, 2007.

H. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of a proposed plan for remedial action on July 31, 2007 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.

with Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

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

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

“Consent Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXVIII). 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 earlier of the date upon which this Consent Decree is entered by the Court or the date upon which the order granting the motion to enter the Consent Decree is entered by the Court, except as otherwise provided in this Consent Decree.

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

“NYSDEC” shall mean the New York State Department of Environmental Conservation and any successor departments or agencies of the State.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other documents submitted pursuant to this Consent Decree, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII (Remedy Review), IX (Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XV (Emergency Response), and Paragraph 89 of Section XXI (Work Takeover). Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs Settling Defendants have agreed to reimburse under this Consent Decree that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from September 28, 2007 to the Effective Date.

“Interim Response Costs” shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between September 1, 2007 and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

“Remedial Design” shall mean those activities to be undertaken by 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 11 and Appendix B 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 Cambrex Corporation, Nepera, Inc., Warner-Lambert Company LLC and Pfizer, Inc.

“Site” shall mean the Nepera Chemical Company Superfund Site, located approximately 1.5 miles south of the Village of Maybrook, in the Town of Hamptonburgh. The Site is 29.3 acres in area and is bounded by Orange County Highway 4 to the north, Beaverdam Brook to the west, the Otter Kill to the south, and an undeveloped tract of land to the east. The Site is depicted generally on the map attached as Appendix C.

“State” shall mean the State of New York.

“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 Settling Defendants to supervise and direct the implementation of the Work under this Consent Decree.

“United States” shall mean the United States of America.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

“Work” shall mean all activities Settling 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. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment by the design and implementation of response actions at the Site by Settling Defendants, to reimburse response costs of Plaintiff, and to resolve the claims of Plaintiff against Settling Defendants as provided in this Consent Decree.

6. Commitments by Settling Defendants.

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

b. In the event of any such conveyance, Owner 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), shall continue to be met by Owner Settling Defendant. In no event shall the conveyance release or otherwise affect the liability of Owner Settling Defendant to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

VI. PERFORMANCE OF WORK BY SETTLING DEFENDANTS

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Work by Settling 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. Within 20 days after the lodging of this Consent Decree, Settling Defendants shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Settling 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," Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001; Reissued May 2006) or equivalent documentation as determined by EPA. The proposed Supervising Contractor, as well as all other contractors and subcontractors who engage in the "practice of engineering" at the Site on behalf of Respondent (as the "practice of engineering" is defined at Section 7201 of the New York State Education Law), must comply with all applicable New York State legal requirements regarding the practice of engineering within the State of New York, including all applicable requirements of the New York State Education Law and Business Corporation Law. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

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

areas undergoing remediation, unless the excavation activities are in compliance with an EPA-approved site management plan (SMP); (b) restricting new construction at the site unless an evaluation of the potential for vapor intrusion is conducted and mitigation, if necessary, is performed in compliance with an EPA-approved SMP; and (c) restricting the use of groundwater as a source of potable or process water unless groundwater quality standards are met; and

ix. the development of an SMP that provides for the proper management of all site remedy components post-construction, such as institutional controls, and that shall also include: (a) monitoring of site groundwater to ensure that, following the soil excavation, the contamination is attenuating and groundwater quality continues to improve; (b) conducting an evaluation of the potential for vapor intrusion, (c) provision for any operation and maintenance required of the components of the remedy, and (d) periodic certifications by the owner/operator or other person implementing the remedy that any institutional and engineering controls are in place.

x. establishment of engineering controls consisting of fencing and signage to prevent inadvertent exposure to Site contaminants by the local populace.

c. If Settling 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 69 (Record Review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Settling 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.

14. Nothing in this Consent Decree, or the SOW constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW will achieve the Performance Standards.

15. a. Settling 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 ten cubic yards.

(1) Settling 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

Settling Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

21. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with the procedures set forth in the Quality Assurance/Quality Control Project Plan (“QAPP”) approved by EPA (See SOW, Appendix B at Section V.A.). If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree.

22. Upon request, Settling Defendants shall allow split or duplicate samples to be taken by EPA and its authorized representatives. Settling Defendants shall notify EPA and the State not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Settling Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of Settling Defendants' implementation of the Work.

23. Settling Defendants shall submit to EPA two copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree within 15 days of the date when those results or data become available to Settling Defendant, unless EPA agrees otherwise.

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

IX. ACCESS AND INSTITUTIONAL CONTROLS

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

a. commencing on the date of lodging of this Consent Decree, provide the United States, the State, 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;
- (3) Conducting investigations relating to contamination at or near the Site;
- (4) Obtaining samples;

(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 30 days of EPA's approval and acceptance of the easement and the title evidence, such Settling Defendant 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 Orange County Clerk's Office. Within 30 days of recording the easement, such Settling Defendant shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps.

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

- a. an agreement to provide access thereto for Settling Defendants, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25(a);
- b. an agreement, enforceable by Settling Defendants and the United States, to 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:
 - i. restriction of any excavation below the soil surface layers in those areas undergoing remediation, unless the excavation activities are in compliance with the EPA-approved SMP;
 - ii. restriction of any new construction at the Site unless an evaluation of the potential for vapor intrusion is conducted and mitigation, if necessary, is performed in compliance with an EPA-approved SMP; and
 - iii. restriction of the use of groundwater at the Site as a source of potable or process water until groundwater quality standards are met at the Site.
- c. the execution and recordation in the Orange County Clerk's Office, State of New York, 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 25(a), and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 25(b), 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 State and its representatives, (iii) Settling Defendants and their representatives, and/or (iv) other

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

X. REPORTING REQUIREMENTS

30. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA and the State five (5) copies of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the community relations plan during the previous month and those to be undertaken in the next six weeks. Settling Defendants shall submit these progress reports to EPA and the State by the fifteenth day of every month following the lodging of this Consent Decree until EPA notifies Settling Defendants pursuant to Paragraph 51(b) of Section XIV (Certification of Completion). If requested by EPA, Settling Defendants shall also provide briefings for EPA to discuss the progress of the Work. Settling Parties may submit the written progress reports electronically to the individuals listed under Paragraph 106.

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

32. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), 42 U.S.C. § 11004, Settling 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 Chief of the Response and Prevention Branch of the Emergency and Remedial Response Division of EPA, Region 2, at (732) 321-6656, or, if such person or his/her delegee is unavailable, the EPA Region 2 Emergency 24-hour Hot Line at (732) 548-8730. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

accrue during the 10-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 39 and 40.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 36(d), Settling 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 Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

39. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require Settling 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. Settling 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).

40. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless Settling 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 (Stipulated Penalties).

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

XII. PROJECT COORDINATORS

42. Within 20 days of lodging this Consent Decree, Settling 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 five working days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Settling Defendants' Project Coordinator shall not be an attorney for any of 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.

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

to Paragraph 45.1(b), in the form attached hereto as Appendix E. Within 20 days after entry of this Consent Decree, Settling Defendants Cambrex Corporation and Nepera, Inc. shall execute or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee legally binding in a form substantially identical to the document attached hereto as Exhibit E, and such Performance Guarantee shall thereupon be effective. Within 30 days of entry of this Consent Decree, said Settling Defendants shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee legally binding to the Chief, New York/Caribbean Superfund Branch, Attention: Nepera Chemical Company Superfund Site Attorney, in accordance with Section XXVI ("Notices and Submissions") of this Consent Decree, and to the United States and EPA as specified in Section XXVI. The letter of credit in the form attached in Appendix E, by its terms, provides that it will not be automatically extended beyond a term of four years. At least 120 days prior to the termination of such letter of credit, Settling Defendants Cambrex Corporation and Nepera, Inc. shall provide notice to EPA pursuant to Paragraph 49 below.

45.3 Settling Defendants Pfizer, Inc. and Warner-Lambert Company, LLC have selected, and EPA has approved, as an initial Performance Guarantee, a demonstration of satisfaction of financial test criteria pursuant to Paragraph 45.1(e) with respect to Pfizer, Inc.

46. If at any time during the effective period of this Consent Decree, Settling Defendants provide a Performance Guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 45(e) or Paragraph 45(f) above, such Settling Defendant shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. §264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods unless otherwise provided in this Consent Decree, including but not limited to (i) the initial submission of required financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant; (ii) the annual re-submission of such reports and statements within ninety days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of the Performance Guarantee methods specified in this Section XIII, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to refer to the Work required under this Consent Decree, and the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to refer to the Estimated Cost of the Work.

47. In the event that EPA determines at any time that a Performance Guarantee provided by any Settling Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that any Settling Defendant becomes aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Settling Defendants, within thirty days of receipt of notice of EPA's determination or, as the case may be, within thirty days of any Settling Defendant becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of Performance Guarantee listed in Paragraph 45 of this Consent Decree that satisfies all requirements set forth in this Section XIII. In seeking approval for a revised or alternative form

b. Change of Form of Performance Guarantee.

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

(ii) Settling Defendants shall submit a written proposal for a revised or alternative form of Performance Guarantee to EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of Performance Guarantee, including all proposed instruments or other documents required in order to make the proposed Performance Guarantee legally binding. The proposed revised or alternative form of Performance Guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Settling Defendants shall submit such proposed revised or alternative form of Performance Guarantee to the Chief, New York/Caribbean Superfund Branch, Attention: Nepera Chemical Company Superfund Site Attorney, in accordance with Section XXVI ("Notices and Submissions") of this Consent Decree. EPA shall notify Settling Defendants in writing of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this subparagraph. Within ten days after receiving a written decision approving the proposed revised or alternative Performance Guarantee, Settling Defendants shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such Performance Guarantee(s) shall thereupon be fully effective. Settling Defendant(s) shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to the Chief, New York/Caribbean Superfund Branch, Attention: Nepera Chemical Company Superfund Site Attorney, within thirty days of receiving a written decision approving the proposed revised or alternative Performance Guarantee in accordance with Section XXVI ("Notices and Submissions") of this Consent Decree and to the United States and EPA as specified in Section XXVI.

c. Release of Performance Guarantee. If Settling Defendants receive written notice from EPA in accordance with Paragraph 51 hereof that the Work has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies Settling Defendants in writing, Settling Defendants may thereafter release, cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section. Settling Defendants shall not release, cancel, or discontinue any Performance Guarantee provided pursuant to this Section except as provided in this subparagraph. In the event of a dispute, Settling Defendants may release, cancel, or discontinue the Performance Guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

51. Completion of the Work.

a. Within 90 days after Settling Defendants conclude that all phases of the Work (including O & M, but not including any obligations under Section VII, Remedy Review, that arise after completion of the O&M), have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, and EPA. If, after the pre-certification inspection, Settling Defendants still believe that the Work has been fully performed, Settling 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 Settling Defendant or Settling 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 for review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require Settling 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 13(b). EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling 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).

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

XV. EMERGENCY RESPONSE

52. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 53, 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, Settling Defendant shall notify the Chief of the Response and Prevention Branch of the Emergency and Remedial Response Division of EPA, Region 2, at (732) 321-6656, or, if such person or his/her delegee is

and in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of New York following lodging of the Consent Decree. Settling Defendants shall provide the following information to its bank:

- i. Receiving Bank ABA Code: 021030004
- ii. Message Type Code: 1000
- iii. Wire Amount:
- iv. Receiving Beneficiary
Bank, Name &
Account No.: TREAS NYC/CTR/BNF=DEPT OF JUSTICE/AC-15030001
- v. Required Beneficiary Information:
* Collection Office Identifier: USAO/SDNY
* Debtor name:
* Collection Office Claim No.: USAO Number: 2007V01565

All payments under this Paragraph 56(a) shall reference the USAO File Number **2007V01565**, EPA Site/Spill ID Number **022L**, and DOJ Case Number **90-11-3-09274**.

b. Instructions for Future Response Costs Payments and Stipulated Penalties.

All payments required, elsewhere in this Consent Decree, to be made in accordance with this Paragraph 56(b) shall be remitted via EFT to EPA's account with the Federal Reserve Bank of New York, as follows. Settling Defendant shall provide the following information to its bank:

- i. Amount of payment
- ii. Bank: **Federal Reserve Bank of New York**
- iii. Account code for Federal Reserve Bank of New York account receiving the payment:
68010727
- iv. Federal Reserve Bank of New York ABA Routing Number: **021030004**
- v. SWIFT Address: **FRNYUS33**
33 Liberty Street
New York, NY 10045
- vi. Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency
- vii. Name of Settling Defendant(s):
- viii. Case number:
- vix. Site/Spill identifier: **022L**

c. Instructions for All Payments. At the time of any payment required to be made in accordance with Paragraphs 56(a) or 56(b), Settling Defendants shall send notice that payment has been made to the United States and EPA in accordance with Section XXVI (Notices and Submissions), and to the EPA Cincinnati Finance Office by mail at 26 Martin Luther King Drive, Cincinnati, Ohio 45268, and by email at acctsreceivable.cinwd@epa.gov.

arising from, or on account of, negligent or other wrongful acts or omissions of 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, 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, Settling Defendants agree to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of 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. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither Settling Defendants nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Settling Defendants notice of any claim for which the United States plans to seek indemnification pursuant to Paragraphs 59 and 60, and shall consult with Settling Defendants prior to settling such claim.

60. Settling 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 Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling 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 Settling 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.

61. No later than 15 days before commencing any on-Site Work, Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Subparagraph 50(b) of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of five 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, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling 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, Settling Defendants need provide

65. If 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 62 and 63, 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

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

67. Any dispute that 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 30 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

68. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 20 days after the conclusion of the informal negotiation period, 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 Settling Defendants. The Statement of Position shall specify Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 69 or Paragraph 70.

b. Within 30 days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 69 or 70. Within 30 days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and Settling Defendants as to whether dispute resolution should proceed under Paragraph 69 or 70, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court

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), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

71. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 76. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

72. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 73 and 74 to the United States for failure to comply with the requirements of this Consent Decree 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.

73. a. Stipulated Penalty Amounts - Work.

b. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph 73(c):

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$3,000 | 1st through 14th day |
| \$6,000 | 15th through 30th day |
| \$12,000 | 31st day and beyond |

c. Compliance Milestones.

(1) submission and, if necessary, revision and resubmission of any plan, report, or other deliverable required by Section VI (Performance of the Work by Settling Defendant) or by the SOW or by any plan which is prepared pursuant to Section VI or the SOW and approved by EPA;

(2) any deadline imposed by the SOW or by any plan which is prepared pursuant to Section VI or the SOW and approved by EPA;

(3) obligations imposed by Section XV (Emergency Response);

(4) obligations imposed by Section IX (Access and Institutional Controls);

(8) reporting requirements set forth in Section X (Reporting Requirements);

(9) timely submission of written notification of any off-site shipment of Waste Material from the Site to an out-of-state waste management facility pursuant to Paragraph 15;

(10) submission of documents and other information in accordance with Section XXIV (Access to Information), and

(11) payments required by Section XVI (Payments for Response Costs).

75. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 89 (Work Takeover) of Section XXI (Covenants Not to Sue by Plaintiff), Settling Defendants shall be liable for a stipulated penalty in the amount of \$500,000.

76. 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 Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Emergency and Remedial Response Division, EPA Region 2, under Paragraph 69(b) or 70(a) of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that 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 in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

78. All penalties accruing under this Section shall be due and payable to the United States within 30 days of Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with the payment procedures set forth in Paragraphs 56(b) and (c) above.

79. 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.

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

85. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants

- a. to perform further response actions relating to the Site, or
- b. to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:

Certification of Completion of the Remedial Action:

- (1) conditions at the Site, previously unknown to EPA, are discovered,
or
- (2) information, previously unknown to EPA, is received, in whole or
in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

86. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants

- a. to perform further response actions relating to the Site, or
- b. to reimburse the United States for additional costs of response if,

subsequent to Certification of Completion of the Remedial Action:

- (1) conditions at the Site, previously unknown to EPA, are discovered,
or
- (2) information, previously unknown to EPA, is received, in whole or
in part,

and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

87. For purposes of Paragraph 85, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 86, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

Work Takeover under Paragraph 89(b). However, notwithstanding Settling 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 89(b) until the earlier of (1) the date that Settling Defendants remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice or (2) the date that a final decision is rendered in accordance with Section XIX (Dispute Resolution), Paragraph 69, requiring EPA to terminate such Work Takeover.

(d) After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any performance guarantee(s) provided pursuant to Section XIII of this Consent Decree, in accordance with the provisions of Paragraph 48 of that Section. If and to the extent that EPA is unable to secure the resources guaranteed under any such performance guarantee(s) and Settling Defendant(s) fail to remit a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed, all in accordance with the provisions of Paragraph 48, any unreimbursed costs incurred by EPA in performing Work under the Work Takeover shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVI (Payments for Response Costs).

90. 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

91. Covenant Not to Sue. Subject to the reservations in Paragraph 92, 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 Site 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 Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

92. Except as provided in Paragraph 99 (Waiver of Res Judicata and Other 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 Paragraphs 85 (Pre-Certification Reservations), 86 (Post-Certification Reservations), and 88 (General Reservations), other than the General Reservations set forth in Paragraphs 88(a) (failure to comply), 88(e) (criminal liability) or 88(f) (violations of law during or after implementation of the Remedial Action), 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.

93. Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the

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 Not to Sue by Plaintiff).

XXIV. ACCESS TO INFORMATION

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

101. Business Confidential and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the Records 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). Records determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Defendants that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Settling Defendants.

b. Settling Defendants may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing Records, they shall provide the Plaintiff with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the contents of the Record; and (6) the privilege asserted by Settling Defendants. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. Settling Defendants shall retain all Records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

c. No Records created or generated pursuant to the requirements of this settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged or confidential.

XXVI. NOTICES AND SUBMISSIONS

106. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and Settling Defendants, respectively. Notices required to be sent to EPA and not to the United States, under the terms of this Consent Decree, should not be sent to the U.S. Department of Justice.

As to the United States or EPA:

Seven (7) copies of all work plans, design documents, and reports and one (1) copy of all other written communications shall be sent to:

Chief, Eastern New York Remedial Section
New York Remediation Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region II
290 Broadway, 20th Floor
New York, NY 10007-1866
Attention: Nepera Chemical Company Remedial Project Manager

One copy of all written communications other than work plans, design documents and technical reports shall also be sent to each of the following individuals:

Chief, New York/Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway, 17th Floor
New York, NY 10007-1866
Attention: Nepera Chemical Company Superfund Site Attorney

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DOJ # 90-11-3-09274

U.S. Attorney's Office
Southern District of New York
86 Chambers Street, 3rd Floor
New York, New York 10007
USAO # 2007V01565
Attention: AUSA Sarah E. Light

William Hatfield, Esq.
Day Pitney LLP
P.O. Box 1945
Morristown, NJ 07962-1945

As to the State of New York:

Ms. Jamie Folsom
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway, 11th Floor
Albany, New York 12233-7014

XXVII. RETENTION OF JURISDICTION

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

XXVIII. APPENDICES

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

“Appendix A” is the ROD.

“Appendix B” is the SOW.

“Appendix C” are the figures showing the location and map of the Site.

“Appendix D” is the draft Easement.

“Appendix E” is the Specimen Letter of Credit.

XXIX. COMMUNITY RELATIONS

109. If requested by EPA, Settling Defendants shall participate in the community relations plan to be developed by EPA. EPA will determine the appropriate role for Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling 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.

XXX. MODIFICATION

110. Material modifications to this Consent Decree (other than to the SOW) shall be in writing, signed by the Parties, and shall be effective upon approval by the Court. Non-material modifications to this Consent Decree (other than to the SOW) shall be in writing and shall be effective when signed by the Parties.

XXXIII. FINAL JUDGMENT

126. 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.

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

SO ORDERED THIS __ DAY OF _____, 20__.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Cambrex Corporation *et al.*, relating to the Nepera Chemical Company Superfund Site.

FOR THE UNITED STATES OF AMERICA


Date

ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

6/26/08
Date


CATHY SEIBEL
Acting United States Attorney for the
Southern District of New York

BY: _____

SARAH LIGHT 
Assistant United States Attorney
Southern District of New York
86 Chambers Street, 3rd Floor
New York, NY 10007

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Cambrex Corporation *et al.*, relating to the Nepera Chemical Company Superfund Site.

6/28/08
Date



GEORGE PAVLOU, Acting Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency,
Region 2
290 Broadway, 19th Floor
New York, New York 10007-1866

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Cambrex Corporation *et al.*, relating to the Nepera Chemical Company Superfund Site.

FOR CAMBREX CORPORATION

May 21, 2008
Date

Signature: _____
Name (print): Peter E. Thauer
Title: Sr. V.P., General Counsel & Secretary
Address: One Meadowlands Plaza
East Rutherford, NJ 07073

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

Name (print): Peter E. Thauer
Title: Sr. V.P.
Address: One Meadowlands Plaza
East Rutherford, NJ 07073
Ph. Number: 201-804-3005

*/ 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. Cambrex Corporation *et al.*, relating to the Nepera Chemical Company Superfund Site.

FOR NEPERA, INC.

May 21, 2008
Date

Signature: _____
Name (print): Peter E. Thauer
Title: Vice President
Address: c/o Cambrex Corporation
One Meadowlands Plaza
East Rutherford, NJ 07073

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

Name (print): Peter E. Thauer
Title: Vice President
Address: c/o Cambrex Corporation
One Meadowlands Plaza
East Rutherford, NJ 07073
Ph. Number: 201-804-3005

*/ 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. Cambrex Corporation *et al.*, relating to the Nepera Chemical Company Superfund Site.

FOR WARNER-LAMBERT COMPANY LLC */

5/19/08
Date

Signature: _____
Name (print): Douglas M. Lankler
Title: Chief Compliance Officer
Senior V.P., Associate General Counsel
Address: Pfizer Inc.
Legal Division
150 East 42nd Street (150/2/24)
New York, NY 10017

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

Name (print): CT Corporation System
Address: 111 Eighth Avenue, 13th Fl.
New York, NY 10011
Ph. Number: 212-894-8940

*/ 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. Cambrex Corporation *et al.*, relating to the Nepera Chemical Company Superfund Site.

FOR PFIZER INC. */

5/19/08
Date

Signature: _____
Name (print): Douglas M. Lankler
Title: Chief Compliance Officer
Senior V.P., Associate General Counsel
Address: Pfizer Inc.
Legal Division
150 East 42nd Street (150/2/24)
New York, NY 10017

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

Name (print): CT Corporation System
Address: 111 Eighth Avenue, 13th Fl.
New York, NY 10011
Ph. Number: 212-894-8940

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