

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
	:	
Plaintiff,	:	
	:	Civil Action No. _____
v.	:	
	:	
Frazer/Exton Development LP;	:	
	:	
Defendant.	:	
	:	

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UNITED STATES OF AMERICA

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v.

Frazer Exton Development LP;

Defendant.  
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**CONSENT DECREE**

**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 and 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 Foote Mineral Superfund Site, located in East Whiteland Township, Chester County, Pennsylvania, together with accrued interest; and (2) performance of studies and response work by Frazer Exton Development LP (“Settling Defendant”) 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 Pennsylvania (the “Commonwealth”) on

1 June 1, 2006 of negotiations with potentially responsible parties regarding the implementation of  
2 the remedial design and remedial action for the Site, and EPA has provided the Commonwealth  
3 with an opportunity to participate in such negotiations and be a party to this Consent Decree.

4 D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified  
5 the National Oceanic and Atmospheric Administration and the U.S. Department of Interior on June  
6 1, 2006 of negotiations with potentially responsible parties regarding the release of hazardous  
7 substances that may have resulted in injury to the natural resources under Federal trusteeship, and  
8 encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

9 E. Settling Defendant does not admit any liability to the Plaintiff arising out of the  
10 transactions or occurrences alleged in the Complaint, nor does it acknowledge that the release or  
11 threatened release of hazardous substance(s) at or from the Site constitutes an imminent or  
12 substantial endangerment to the public health or welfare or the environment.

13 F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the  
14 National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal  
15 Register in October, 1992.

16 G. In September 1996, in response to a release or a substantial threat of a release of a  
17 hazardous substance(s) at or from the Site, Settling Defendant commenced in a Remedial  
18 Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

19 H. The Settling Defendant completed a Remedial Investigation ("RI") Report on  
20 June 4, 2001, and completed a Feasibility Study ("FS") Report on June 5, 2001.

21 I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the  
22 completion of the FS and of the proposed plan for remedial action in August 2003, in a major local  
23 newspaper of general circulation. EPA provided an opportunity for written and oral comments

1 from the public on the proposed plan for remedial action. During the public comment period for  
2 that Proposed Remedial Action Plan (“Proposed Plan”), an East Whiteland resident informed EPA  
3 that the Foote Mineral Superfund Site had also been added to the list of Atomic Weapons Employers  
4 assembled by the United States Department of Energy. To evaluate the complications brought about  
5 by this discovery of radiation, EPA retracted the August 2003 Proposed Plan and required additional  
6 investigations. On October 12, 2005, pursuant to Section 113(k)(2)(B) of CERCLA, EPA released  
7 for public comment the October 2005 Proposed Plan setting forth EPA’s preferred alternative for the  
8 Site.

9 The administrative record upon which the Regional Administrator based the selection of the  
10 response action is available to the public for review.

11 J. The decision by EPA on the remedial action to be implemented at the Site is embodied in a  
12 final Record of Decision (“ROD”), executed on March 31, 2006 on which the Commonwealth has  
13 given its concurrence. The ROD includes EPA's explanation for any significant differences  
14 between the final plan and the original proposed plan as well as a responsiveness summary to the  
15 public comments. Notice of the final plan was published in accordance with Section 117(b) of  
16 CERCLA.

17 K. Based on the information presently available to EPA, EPA believes that the Work (as  
18 defined below) will be properly and promptly conducted by the Settling Defendant if conducted in  
19 accordance with the requirements of this Consent Decree and its appendices.

20 L. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the Remedial  
21 Action selected by the ROD and the Work to be performed by the Settling Defendant shall  
22 constitute a response action taken or ordered by the President.

1 M. Settling Defendant has undertaken certain remedial and/or removal actions at the Site prior  
2 to the entry of this Consent Decree including, but not limited to, work performed pursuant to the  
3 Administrative Order by Consent for Removal Response Action (Docket No. CERC-03-2002-  
4 0244DC) and the Administrative Settlement Agreement and Order on Consent for Remedial  
5 Design (Docket. No. \_\_\_\_\_). After signature by the Regional Administrator,  
6 EPA Region III of the Administrative Settlement Agreement and Order on Consent for Remedial  
7 Design, the Settling Defendant submitted to EPA for review a description of all work performed at  
8 the Site. EPA reviewed all work performed by the Settling Defendant, and determined that all  
9 work has been performed in accordance with all of the requirements in the ROD. (Appendix E).

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

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

## 16 **II. JURISDICTION**

17 1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§  
18 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal  
19 jurisdiction over the Settling Defendant. Solely for the purposes of this Consent Decree and the  
20 underlying complaint, Settling Defendant waives all objections and defenses that it may have to  
21 jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the  
22 terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## 23 **III. PARTIES BOUND**



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

4       “Day” shall mean a calendar day unless expressly stated to be a working day. “Working day”  
5 shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of  
6 time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal  
7 holiday, the period shall run until the close of business of the next working day.

8       “Duly Authorized Representative” shall mean a person set forth or designated in accordance  
9 with the procedures set forth in 40 C.F.R. § 270.11(b).

10       “Effective date” shall be the effective date of this Consent Decree as provided in Section  
11 XXVII of this Consent Decree.

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

14       “Commonwealth” shall mean the Pennsylvania Department of Environmental Protection  
15 (PADEP) and any successor departments or agencies of the Commonwealth.

16       “Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect  
17 costs that the United States incurs in reviewing or developing plans, reports, and other items  
18 pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or  
19 enforcing this Consent Decree. “Future Response Costs” includes, but is not limited to, payroll  
20 costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII,  
21 IX (including, but not limited to, the cost of attorney time and any monies paid to secure access  
22 and/or to secure or implement institutional controls including, but not limited to, the amount of  
23 just compensation), XV, and Paragraph 87 of Section XXI. “Future Response Costs” shall also  
24 include all Interim Response Costs, all future oversight costs, and all Interest on those Past



1 Response Costs Settling Defendant has agreed to reimburse under this Consent Decree that has  
2 accrued pursuant to 42 U.S.C. § 9607(a), during the period from January 17, 2006 to the date of  
3 entry of this Consent Decree.

4 “Groundwater Management Zone” shall mean the institutional control implemented for  
5 downgradient areas at the Site impacted by groundwater contaminated by the Site, the extent of  
6 which is currently anticipated to include areas directly adjacent to the geologic contact fault and  
7 within the general bounds of the area of concern depicted in Figure 3 of the ROD. The extent of  
8 the Groundwater Management Zone shall be developed in consultation with EPA, the  
9 Pennsylvania Department of Environmental Protection, the Chester County Health Department,  
10 and East Whiteland Township. The Groundwater Management Zone may entail restrictions on the  
11 installation of new wells in the Groundwater Management Zone, mandatory sampling for Site-  
12 related contaminants on new wells, and other methods of identifying or limiting exposure to  
13 contaminated groundwater. The extent and requirements for the Groundwater Management Zone  
14 are expected to be revised as the contaminants are depleted and the extent of the plume shrinks.  
15 Institutional controls may include deed notices, restrictive covenants, and other appropriate legal  
16 restrictions.

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

22 “Interim Response Costs” shall mean all costs, including direct and indirect costs, (a) paid by  
23 the United States in connection with the Site between January 17, 2006 and the Effective Date, or  
24 (b) incurred prior to the Effective Date but paid after that date and, © Interest on all such costs.

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

4 “Operation and Maintenance” or “O & M” shall mean all activities required to maintain the  
5 effectiveness of the Remedial Action as required under the Operation and Maintenance Plan  
6 approved or developed by EPA pursuant to this Consent Decree.

7 “Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral or an  
8 upper case letter.

9 “Parties” shall mean the United States and the Settling Defendant.

10 “Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect  
11 costs, that the United States has paid at or in connection with the Site through January 17, 2006  
12 and which are identified in the summary of costs attached hereto as Appendix A.

13 “Performance Standards” shall mean the cleanup standards and other measures for achieving  
14 the goals of the Remedial Action set forth on pages 50 to 57 of the ROD, including any  
15 modifications that are developed by the Settling Defendant and approved by EPA.

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

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

19 “Property” shall mean approximately 79 acres located at 15 South Bacton Hill Road, East  
20 Whiteland Township, Chester County, Pennsylvania.

21 “Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Site  
22 signed on March 31, 2006, by the Regional Administrator, EPA Region III, or his delegate, and all  
23 attachments thereto. The ROD is attached as Appendix B.

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

5           “Remedial Action Work Plan” shall mean the document developed pursuant to Paragraph 11  
6 of this Consent Decree and approved by EPA, and any amendments thereto.

7           “Remedial Design” shall mean those activities to be undertaken by the Settling Defendant to  
8 develop the final plans and specifications for the Remedial Action pursuant to the Remedial  
9 Design Work Plan.

10          “Remedial Design Work Plan” shall mean the document developed pursuant to Paragraph 11  
11 of this Consent Decree and approved by EPA, and any amendments thereto.

12          “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

13          “Settlement Amount” shall mean the amount the Settling Defendant is required to pay  
14 pursuant to Paragraph 54 (Payments for Past Response Costs) of this Consent Decree.

15          “Site” shall mean the Foote Mineral Superfund Site, which is comprised of the waste  
16 materials and contaminated soils, groundwater, surface water, and sediment located on and  
17 emanating from the Property. Only the contaminated areas of the Property are included in the  
18 definition of the Site. The boundaries of the Site also extend further east than the legal boundaries  
19 of the Property, since groundwater contamination has migrated eastward, away from the Property,  
20 to reach approximately 10,000 feet beyond the Property boundary. This extended area of  
21 groundwater contamination is also part of the Site. The approximate areal extent of the Site  
22 including the groundwater plume is depicted in Figure 3 of the ROD. A portion of the Property,  
23 approximately 36 undeveloped acres of the west side, is not part of the Site.

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

3 “United States” shall mean the United States of America, and all its Departments, agencies,  
4 and instrumentalities.

5 “Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of  
6 CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42  
7 U.S.C. § 9601(33); and (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C.  
8 § 6903(27).

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

## 11 **V. GENERAL PROVISIONS**

### 12 5. Objectives of the Parties

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

### 17 6. Commitments by Settling Defendant

18 a. Settling Defendant shall finance and perform the Work in accordance with this Consent  
19 Decree, the ROD, and all work plans and other plans, standards, specifications, and schedules set  
20 forth herein or developed by Settling Defendant and approved by EPA pursuant to this Consent  
21 Decree. Settling Defendant shall also reimburse the United States for Past Response Costs and  
22 Future Response Costs as provided in this Consent Decree.

1           b. In the event that the Settling Defendant files for bankruptcy or is placed involuntarily in  
2 bankruptcy proceedings, Settling Defendant shall notify the United States within three (3) days of  
3 such filing.

4           7. Compliance With Applicable Law

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

11           8. Permits

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

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

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

23           9. Notice of Obligations to Successors-in-Title

1           a. With respect to any property owned or controlled by the Settling Defendant that is  
2 located within the Site, within fifteen (15) days after the entry of this Consent Decree, Settling  
3 Defendant shall submit to EPA for review and approval a notice to be filed with the Recorder's  
4 Office or Registry of Deeds or other appropriate office, Chester County, Commonwealth of  
5 Pennsylvania, which shall provide notice to all successors-in-title that the property is part of the  
6 Site, that EPA selected a remedy for the Site on March 31, 2006, and that potentially responsible  
7 parties have entered into a Consent Decree requiring implementation of the remedy. Such  
8 notice(s) shall identify the United States District Court in which the Consent Decree was filed, the  
9 name and civil action number of this case, and the date the Consent Decree was entered by the  
10 Court. The Settling Defendant shall record the notice within ten (10) days of EPA's approval of  
11 the notice. The Settling Defendant shall provide EPA with a certified copy of the recorded  
12 notice(s) within ten (10) days of recording such notice.

13           b. At least thirty (30) days prior to the conveyance of any interest in property owned  
14 or controlled by Settling Defendant located within the Site including, but not limited to, fee  
15 interests, leasehold interests, and mortgage interests, the Settling Defendant conveying the interest  
16 shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by which an  
17 interest in real property has been conveyed that confers a right of access to the Site (hereinafter  
18 referred to as "access easements") pursuant to Section IX (Access and Institutional Controls), and  
19 (iii) any instrument by which an interest in real property has been conveyed that confers a right to  
20 enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements")  
21 pursuant to Section IX (Access and Institutional Controls). At least thirty (30) days prior to such  
22 conveyance, the Settling Defendant conveying the interest shall also give written notice to EPA  
23 and the Commonwealth of the proposed conveyance, which notice shall include the name and  
24 address of the grantee and the date on which notice of the Consent Decree, access easements,

1 and/or restrictive easements was given to the grantee. The transfer of a life estate interest to a  
2 prospective occupant of the Property shall not be deemed a conveyance of an interest in property  
3 for purposes of this provision.

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

## 12 **VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT**

### 13 10. Selection of Contractors.

#### 14 a. Supervising Contractor.

15 I. All aspects of the Work to be performed by Settling Defendant pursuant to  
16 Sections VI (Performance of the Work by Settling Defendant), VII (Remedy Review), VIII  
17 (Quality Assurance, Sampling, and Data Analysis), and XV (Emergency Response) of this  
18 Consent Decree shall be under the direction and supervision of the Supervising Contractor. The  
19 Settling Defendant has submitted, and EPA has accepted, ECOR Solutions, Inc. as the Supervising  
20 Contractor for the Work. In the event the Settling Defendant seeks to change the Supervising  
21 Contractor, Settling Defendant shall notify EPA in writing of the name, title, and qualifications of  
22 any contractor proposed to be the Supervising Contractor and shall demonstrate that the proposed  
23 contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and  
24 Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology

1 Programs,” (American National Standard, January 5, 1995), by submitting a copy of the proposed  
2 contractor’s Quality Management Plan (QMP). The QMP should be prepared in accordance with  
3 “EPA Requirements for Quality Management Plans (QA/R-2)” (EPA/240/B-01/002, March 2001)  
4 or equivalent documentation as determined by EPA. Settling Defendant must obtain a notice of  
5 acceptance of such change from EPA, after a reasonable opportunity for review and comment by  
6 the State, before the new Supervising Contractor performs, directs, or supervises any Work under  
7 this Consent Decree.

8           ii. If EPA disapproves the selection of a proposed Supervising Contractor,  
9 EPA will notify Settling Defendant in writing. Settling Defendant shall submit to EPA a list of at  
10 least three contractors, including the qualifications of each contractor, that would be acceptable to  
11 them within thirty (30) days of receipt of EPA's notice. EPA will provide written notice of the  
12 names of any contractor(s) whose selection it would accept. Settling Defendant may select any  
13 contractor from that list and shall notify EPA of the name of the contractor selected within twenty-  
14 one (21) days of EPA's written notice.

15           iii. If EPA fails to provide written notice of its acceptance or disapproval as  
16 provided in this Paragraph and this failure prevents the Settling Defendant from meeting one or  
17 more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendant  
18 may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree.

19           b. Other Contractors and Subcontractors.

20           The Settling Defendant shall submit to EPA for acceptance by EPA the names and  
21 qualifications of any additional contractors and subcontractors it proposes to use to satisfy any  
22 requirement of this Consent Decree before such contractor or subcontractor performs any Work.  
23 If EPA does not respond with a notice accepting or disapproving the proposal for additional  
24 contractors and subcontractors within fourteen (14) days of receipt by EPA of Settling Defendant's



1 selections, the proposal for additional contractors and subcontractors shall be deemed accepted. In  
2 the event EPA disapproves any proposed contractor or subcontractor, Settling Defendant shall  
3 submit to EPA a list of at least three contractors or subcontractors, including the qualifications of  
4 each, that would be acceptable to it within ten (10) days of receipt of EPA's notice. EPA will  
5 provide written notice of the names of any contractor(s) or subcontractor(s) whose selection it  
6 would accept. Settling Defendant may select any contractor or subcontractor from that list and  
7 shall notify EPA of the name of the contractor or subcontractor selected within five (5) days of  
8 EPA's written notice.

9 11. Remedial Design/Remedial Action.

10 a. Within 30 days of entry of this Consent Decree, Settling Defendant shall submit to  
11 EPA a work plan for the design of the Remedial Action at the Site (“Remedial Design Work Plan”  
12 or “RD Work Plan”). The RD Work Plan shall be prepared by the individual(s) and/or entity(ies)  
13 responsible for completion of the Remedial Design, except to the extent such persons have been  
14 disapproved by EPA. The Remedial Design Work Plan shall provide for design of the remedy set  
15 forth in the ROD and for achievement of the Performance Standards and other requirements set  
16 forth in the ROD and this Consent Decree. Upon its approval by EPA, the Remedial Design Work  
17 Plan shall be incorporated into and become enforceable under this Consent Decree. The Settling  
18 Defendant shall also submit to EPA and the Commonwealth, at the time the Remedial Design  
19 Work plan is submitted, a Health and Safety Plan for field design activities which conforms to the  
20 applicable Occupational Safety and Health Administration and EPA requirements including, but  
21 not limited to, 29 C.F.R. § 1910.120.

22 b. The Remedial Design Work Plan shall include plans, schedules, and methodologies  
23 for implementation of all remedial design and pre-design tasks and shall include, at a minimum:

- 24 1. a Site Management Plan;

- 1                   2.     a Remedial Design Sampling and Analysis Plan, containing:
  - 2                             a Field Sampling Plan; and a Quality Assurance Project Plan (QAPP);
  - 3                   3.     a Remedial Design Contingency Plan;
  - 4                   4.     a Treatability Study Work Plan which includes, at a minimum, plans
  - 5                             and schedules for the preparation and submission of a Treatability
  - 6                             Study Evaluation Report;
  - 7                   5.     plans and schedules for the preparation and submission of a Preliminary
  - 8                             Design Submittal (the preliminary design begins with the initial design
  - 9                             and ends with the completion of approximately 30% of the design
  - 10                            effort) containing, at a minimum:
    - 11                            a.     a Design Criteria Report, including:
      - 12                                       1.     project description;
      - 13                                       2.     design requirements and provisions;
      - 14                                       3.     preliminary process flow diagrams;
      - 15                                       4.     operation & maintenance requirements;
      - 16                            b.     a Basis of Design Report, including:
        - 17                                       1.     justification of design assumptions;
        - 18                                       2.     a project delivery strategy;
        - 19                                       3.     remedial action permits plan for off-site permits;
        - 20                                       4.     preliminary easement/access requirements;
        - 21                            c.     Preliminary Drawings and Specifications, including:
          - 22                                       1.     outline of general specifications;
          - 23                                       2.     preliminary schematics and drawings;

- 1 3. chemical and geotechnical data (including data from pre-
- 2 design activities);
- 3 d. a value engineering screen; and
- 4 e. preliminary Remedial Action schedule.
- 5 6. plans and schedules for the preparation and submission of a pre-final
- 6 design submittal which shall be submitted at approximately 90% of the
- 7 design effort and shall address all of EPA's comments to the
- 8 preliminary design, and, at a minimum, additionally include:
- 9 a. a revised Design Criteria Report, if necessary;
- 10 b. a revised Basis of Design Report, if necessary;
- 11 c. any value engineering study results;
- 12 d. revised Drawings and Specifications;
- 13 e. a draft Operation & Maintenance Plan;
- 14 f. a draft Construction Quality Assurance Plan ("CQAP") (the
- 15 CQAP, which shall detail the approach to quality assurance
- 16 during construction activities at the Site, shall specify a quality
- 17 assurance official ("QA Official"), independent of the
- 18 Supervising Contractor, to conduct a quality assurance program
- 19 during the construction phase of the project);
- 20 g. a draft Remedial Action decontamination plan;
- 21 h. a draft Remedial Action waste management plan;
- 22 i. a draft Remedial Action contingency plan;
- 23 j. a revised Remedial Action schedule, if necessary;

- 1 k. a draft Remedial Action Health and Safety Plan (“HASP”) for  
2 EPA acceptance;  
3 a draft Remedial Action Sampling and Analysis Plan; and  
4 a draft Operation & Maintenance Plan
- 5 7. plans and schedules for the preparation and submission of a final design  
6 submittal which shall be submitted at 100% of the design effort and  
7 shall address all of EPA’s comments to the pre-final design, and, at a  
8 minimum, additionally include a:
- 9 a. final Remedial Action schedule;  
10 b. final Remedial Action contingency plan;  
11 c. final Remedial Action HASP for EPA acceptance;  
12 d. final Remedial Action waste management plan;  
13 e. final Remedial Action decontamination plan with a schedule for  
14 reevaluation, and revision as necessary, during construction  
15 activities during ;  
16 f. final Design Criteria Report;  
17 g. final Remedial Action Sampling and Analysis Plan (directed at  
18 measuring progress towards meeting the Performance  
19 Standards);  
20 h. final Basis of Design Report;  
21 i. final Drawings and Specifications;  
22 j. final Operation & Maintenance Plan;  
23 k. final Construction Quality Assurance Plan; and  
24 l. final project delivery strategy.

1 8. a Remedial Design schedule.

2 9. Where more appropriate or efficient, the above plans, reports and schedules  
3 may be combined with and/or incorporated as sections of other Submittals.  
4 Additionally, where more appropriate or efficient, individual components of  
5 the Remedial Action may be designed and submitted for approval  
6 independently.

7 c. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable  
8 opportunity for review and comment by the State, and submittal of the Health and Safety Plan for  
9 all field activities to EPA and the State, Settling Defendant shall implement the Remedial Design  
10 Work Plan in accordance with the schedules and methodologies contained therein. The Settling  
11 Defendant shall submit to EPA all plans, submittals, and other deliverables required under the  
12 approved Remedial Design Work Plan in accordance with the approved schedule therein for  
13 review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions).  
14 Unless otherwise directed by EPA, after entry of the Consent Decree Settling Defendant shall not  
15 commence further Remedial Design field activities at the Site prior to approval of the Remedial  
16 Design Work Plan.

17 d. Upon approval, approval with conditions, or modification by EPA, as provided in  
18 Section XI (EPA Approval of Plans and Other Submissions) of all components of the final design  
19 submittal, the final design submittal shall serve as the Remedial Action Work Plan and shall be  
20 enforceable under this Consent Decree. The Settling Defendant shall implement the activities  
21 required under the Remedial Action Work Plan in accordance with the schedules and  
22 methodologies contained therein.

23 e. The Settling Defendant shall submit all plans, submittals, or other deliverables  
24 required under the Remedial Action Work Plan in accordance with the approved schedule for

1 review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions).  
2 Unless otherwise directed by EPA or required under the Remedial Design Work Plan, after entry  
3 of the Consent Decree the Settling Defendant shall not commence physical activities at the Site  
4 prior to the date for commencement set forth in the approved schedule in the Remedial Action  
5 Work Plan.

6 12. Resident Engineer.

7 Following EPA approval, approval with conditions, or modification by EPA, as  
8 provided in Section XI (EPA Approval of Plans and Other Submissions), of all components of the  
9 final design submittal, and prior to commencement of any on-Site Work under the Remedial  
10 Action Work Plan, the Settling Defendant shall submit to EPA the name and qualifications of a  
11 Resident Engineer to be present at the Site during construction to ensure that the Work is  
12 performed in accordance with the approved Remedial Action Work Plan. The Resident Engineer  
13 shall be familiar with all aspects of the Remedial Design approved by EPA. EPA retains the right  
14 to disapprove the use of any Resident Engineer proposed by Settling Defendant. In the event EPA  
15 disapproves the use of any proposed Resident Engineer, Settling Defendant shall submit to EPA a  
16 list of at least three replacements, including the qualifications of each, who would be acceptable to  
17 it within five (5) days of receipt of EPA's notice. EPA will provide written notice of the names of  
18 any replacements whose use it would accept. Settling Defendant may select any replacement from  
19 the EPA notice and shall notify EPA of the name of the replacement selected within three (3) days  
20 of EPA's written notice. Settling Defendant shall ensure that the Resident Engineer performs on-  
21 Site inspections as necessary to ensure compliance with the approved Remedial Action Work Plan  
22 and that the results of such inspections are promptly provided to Settling Defendant, EPA, and the  
23 State. The Resident Engineer may act as the QA Official.

1           13. The Settling Defendant shall continue to implement the Remedial Action and O & M  
2 until the Performance Standards are achieved and for so long thereafter as is otherwise required  
3 under this Consent Decree. In the event Settling Defendant believes that achieving or maintaining  
4 one or more of the Performance Standards through the implementation of the selected remedy is  
5 technically impracticable, Settling Defendant shall notify EPA and submit a report documenting  
6 the basis of that determination. EPA will review the report submitted by Settling Defendant. If  
7 EPA, in consultation with the Commonwealth, agrees that it is technically impracticable for  
8 Settling Defendant to achieve and maintain any one or more of the Performance Standards through  
9 the implementation of the selected remedy, EPA shall modify or waive such Performance  
10 Standards and modify the Work in accordance with Paragraph 14 of this Consent Decree.

11           14. Modification of the Work.

12           a. If EPA determines that modification of the Work is necessary to achieve and  
13 maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy  
14 set forth in the ROD, EPA may (1) require that such modification be incorporated into the  
15 Remedial Design Work Plan, Remedial Action Work Plan, Operation and Maintenance Plan,  
16 and/or any other plan relating to such Work, and/or (2) require that Settling Defendant submit a  
17 plan for EPA approval which incorporates such modification to the Work and implement such  
18 approved plan provided, however, that a modification may be required pursuant to this Paragraph  
19 only to the extent that it is consistent with the scope of the remedy selected in the ROD.

20           b. For the purposes of this Paragraph 14 and Paragraphs 50 and 51 only, the "scope of  
21 the remedy selected in the ROD" means the tasks employing a technology or combination of  
22 technologies discussed in Section XII of the ROD (Selected Remedy) to achieve and maintain the  
23 objectives described in the ROD. The technologies discussed in Section XII of the ROD include:

1 i. In-Situ Soil Stabilization of the South Quarry waste, excavation and off-Site  
2 disposal of radiological soils, excavation of debris and contaminated soils on  
3 the Property; and consolidation and capping of the excavated debris and  
4 contaminated soils and other waste materials or demolition waste in either the  
5 North or South Quarry located on the Property.

6 ii. Long-term monitoring of groundwater to determine if the source control  
7 measures are effective in reducing contaminant concentrations in groundwater  
8 to drinking water standards.

9 iii. Implementation of institutional controls to prevent residential use of impacted  
10 groundwater, prevent residential use of the capped Quarry areas and preserve  
11 the integrity of the remedy.

12 c. If Settling Defendant objects to any modification determined by EPA to be  
13 necessary pursuant to this Paragraph, it may seek dispute resolution pursuant to Section XIX  
14 (Dispute Resolution), Paragraph 68 (record review). The Remedial Design Work Plan, Remedial  
15 Action Work Plan, Operation and Maintenance Plan, and/or related work plans shall be modified  
16 in accordance with final resolution of the dispute.

17 d. Settling Defendant shall implement any work required by any modifications  
18 incorporated in the Remedial Design Work Plan, Remedial Action Work Plan, Operation and  
19 Maintenance Plan, and/or in work plans developed in accordance with this Paragraph.

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

22 15. Settling Defendant acknowledges and agrees that nothing in this Consent Decree or the  
23 Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any



1 kind by Plaintiff that compliance with the work requirements set forth in the Work Plans will  
2 achieve the Performance Standards.

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

8 a. The Settling Defendant shall include in the written notification the following  
9 information, where available:

10 i. the name and location of the facility to which the Waste Material is to be  
11 shipped;

12 ii. the type and quantity of the Waste Material to be shipped;

13 iii. the expected schedule for the shipment of the Waste Material; and

14 iv. the method of transportation. The Settling Defendant shall notify the state  
15 in which the planned receiving facility is located of major changes in the  
16 shipment plan, such as a decision to ship the Waste Material to another facility  
17 within the same state, or to a facility in another state.

18 b. The identity of the receiving facility and state will be determined by the Settling  
19 Defendant following the award of the contract for Remedial Action construction. The Settling  
20 Defendant shall provide the information required by Paragraph 16.a as soon as practicable after the  
21 award of the contract but in no case less than seven (7) days before the Waste Material is actually  
22 shipped.

23 c. Before shipping any hazardous substances, pollutants, or contaminants from the  
24 Site to an off-site location, Settling Defendant shall obtain EPA's certification that the proposed

1 receiving facility is operating in compliance with the requirements of Section 121(d)(3) of  
2 CERCLA and 40 C.F.R. § 300.440. Settling Defendant shall only send hazardous substances,  
3 pollutants, or contaminants from the Site to an off-Site facility that complies with the requirements  
4 of the statutory provision and regulations cited in the preceding sentence.

## 5 **VII. REMEDY REVIEW**

6 17. Periodic Review. Settling Defendant shall conduct any studies and investigations as  
7 requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is  
8 protective of human health and the environment, at least every five (5) years as required by  
9 Section 121© of CERCLA and any applicable regulations.

10 18. EPA Selection of Further Response Actions. If EPA determines, at any time, that the  
11 Remedial Action is not protective of human health and the environment, EPA may select further  
12 response actions for the Site in accordance with the requirements of CERCLA and the NCP.

13 19. Opportunity To Comment. Settling Defendant and, if required by Sections 113(k)(2) or  
14 117 of CERCLA, the public, will be provided with an opportunity to comment on any further  
15 response actions proposed by EPA as a result of the review conducted pursuant to Section 121© of  
16 CERCLA and to submit written comments for the record during the comment period.

17 20. Settling Defendants' Obligation To Perform Further Response Actions. If EPA selects  
18 further response actions for the Site, the Settling Defendant shall undertake such further response  
19 actions to the extent that the reopener conditions in Paragraph 83 or Paragraph 84 (United States'  
20 reservations of liability based on unknown conditions or new information) are satisfied. If EPA  
21 requires Settling Defendant to undertake such further actions pursuant to this Paragraph, Settling  
22 Defendant may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1)  
23 EPA's determination that the reopener conditions of Paragraph 83 or Paragraph 84 of Section XXI  
24 (Covenants Not To Sue by Plaintiff) are satisfied, (2) EPA's determination that the Remedial

1 Action is not protective of human health and the environment, or (3) EPA's selection of the further  
2 response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's  
3 selection of further response actions shall be resolved pursuant to Paragraph 68 (record review).

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

### 9 **VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS**

10 22. While conducting all sample collection and analysis activities required by this Consent  
11 Decree, the Settling Defendant shall implement quality assurance, quality control, and chain of  
12 custody procedures in accordance with "EPA Requirements for Quality Assurance Project Plans  
13 (EPA QA/R-5)"(EPA 240 B-01 003, March 2001); "EPA NEIC Policies and Procedures Manual,"  
14 (May 1986) (EPA 330/978-001-R); National Functional Guidelines for Inorganic Data Review  
15 (EPA 540/R-94/013) and Modifications to the National Functional Guidelines for Inorganic Data  
16 Review (EPA Region III: April 1993); National Functional Guidelines for Organic Data Review  
17 (EPA 540/R-94/012) and Modifications to the National Functional Guidelines for Organic Data  
18 Review (EPA Region III: September 1994); "Region III Innovative Approaches to Data  
19 Validation," (EPA Region III: September 1994); "Data Quality Objectives Process for Superfund,"  
20 (EPA 540/R-93/071: September 1994); and subsequent amendments to such guidelines upon  
21 notification by EPA to Settling Defendant of such amendment. Amended guidelines shall apply  
22 only to procedures conducted after such notification. Prior to the commencement of any  
23 monitoring project under this Consent Decree, Settling Defendant shall submit to EPA for  
24 approval, after a reasonable opportunity for review and comment by the Commonwealth, a Quality

1 Assurance Project Plan ("QAPP") for the Work that is consistent with the NCP and the guidance  
2 documents cited above. If relevant to the proceeding, the Parties agree that validated sampling  
3 data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be  
4 admissible as evidence, without objection, in any proceeding under this Decree. Settling  
5 Defendant shall ensure that EPA personnel and their authorized representatives are allowed access  
6 at reasonable times to all laboratories utilized by Settling Defendant in implementing this Consent  
7 Decree. In addition, Settling Defendant shall ensure that such laboratories shall analyze all  
8 samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling  
9 Defendant shall ensure that the laboratories they utilize for the analysis of samples taken pursuant  
10 to this Decree perform all analyses according to accepted EPA methods. Settling Defendant shall  
11 submit to EPA the selected laboratory's(ies') Quality Assurance Program Plan and their  
12 qualifications, which shall include, at a minimum, previous certifications, Performance Evaluation  
13 (PE) results, equipment lists and personnel resumes. Settling Defendant shall ensure that all field  
14 methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will  
15 be conducted in accordance with the procedures set forth in the QAPP approved by EPA. At the  
16 request of EPA, Settling Defendant shall conduct one or more audits of the selected laboratory(ies)  
17 to verify analytical capability and compliance with the QAPP. Auditors shall conduct lab audits  
18 during the time the laboratory(ies) is analyzing samples collected pursuant to this Consent Decree.  
19 The lab audit shall be conducted according to procedures available from the QA Branch. Audit  
20 reports shall be submitted to the EPA Project Coordinator within fifteen (15) days of completion  
21 of the audit. The Settling Defendant shall report serious deficiencies, including all those which  
22 adversely impact data quality, reliability or accuracy, and take action to correct such deficiencies  
23 within twenty-four (24) hours of the time the Settling Defendant knew or should have known of  
24 the deficiency.

1       23. Upon request, the Settling Defendant shall allow split or duplicate samples to be taken by  
2 EPA or their authorized representatives. Settling Defendant shall notify EPA not less than 28 days  
3 in advance of any sample collection activity unless shorter notice is agreed to by EPA. In  
4 addition, EPA shall have the right to take any additional samples that EPA deem necessary. Upon  
5 request, EPA shall allow the Settling Defendant to take split or duplicate samples of any samples it  
6 takes as part of the Plaintiff's oversight of the Settling Defendants' implementation of the Work.

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

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

### 13                   **IX. ACCESS AND INSTITUTIONAL CONTROLS**

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

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

- 21                   i. Monitoring the Work;
- 22                   ii. Verifying any data or information submitted to the United States;
- 23                   iii. Conducting investigations relating to contamination at or near the Site;
- 24                   iv. Obtaining samples;

1 v. Assessing the need for, planning, or implementing  
2 additional response actions at or near the Site;

3 vi. Assessing implementation of quality assurance and quality control  
4 practices as defined in the approved Quality Assurance Project Plans;

5 vii. Implementing the Work pursuant to the conditions set forth in Paragraph  
6 87 of this Consent Decree (Work Takeover);

7 viii. Inspecting and copying records, operating logs, contracts, or other  
8 documents maintained or generated by Settling Defendant or its agents, consistent with  
9 Section XXIV;

10 ix. Assessing Settling Defendants' compliance with this Consent Decree; and

11 x. Determining whether the Site or other property is being used in a manner  
12 that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant  
13 to this Consent Decree;

14 b. commencing on the date of lodging of this Consent Decree, refrain from using the  
15 Site, or such other property, in any manner that would interfere with or adversely affect the  
16 implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to  
17 this Consent Decree. Such restrictions, as described in the ROD, include, a prohibition of future  
18 residential development on capped areas of the North and South Quarries at the Site, and other  
19 restrictions, including by not limited to: (i) provision of notice to current and future owners of the  
20 Site regarding the impacted groundwater and soil contamination and quarry fill left at the  
21 conclusion of the remedial action, (ii) prohibition of any activity that could potentially damage or  
22 interfere with the selected remedy, and (iii) establishment of a Groundwater Management Zone for  
23 the downgradient areas impacted or potentially impacted by contaminated groundwater that may  
24 entail restrictions on the installation of new wells, mandatory sampling for Site-related

1 contaminants on new wells and other methods of identifying or limiting exposure. The extent and  
2 requirements for the Groundwater Management Zone are expected to be revised with time as  
3 contaminants are depleted and the extent of the plume shrinks; and

4 c. execute and record in the Recorder's Office or Registry of Deeds or other  
5 appropriate land records office of Chester County, Pennsylvania, an easement, running with the  
6 land, that: (i) grants a right of access for the purpose of conducting any activity related to this  
7 Consent Decree including, but not limited to, those activities listed in Paragraph 26(a) of this  
8 Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in  
9 Paragraph 26(b) of this Consent Decree, or other restrictions that EPA determines are necessary to  
10 implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to  
11 be performed pursuant to this Consent Decree. Settling Defendant shall grant the access rights and  
12 the rights to enforce the land/water use restrictions to the United States, on behalf of EPA, and its  
13 representatives, and to the Commonwealth and its representatives. Settling Defendant shall, within  
14 forty-five (45) days of entry of this Consent Decree, submit to EPA for review and approval with  
15 respect to such property:

16 i. a draft easement, in substantially the form attached hereto as Appendix D, that  
17 is enforceable under the laws of the Commonwealth of Pennsylvania; and

18 ii. a current title insurance commitment or some other evidence of title acceptable to  
19 EPA, which shows title to the land described in the easement to be free and clear of all prior liens  
20 and encumbrances; except when those liens or encumbrances are approved by EPA or when,  
21 despite best efforts, Settling Defendant is unable to obtain release or subordination of such prior  
22 liens or encumbrances.

23 d. Within fifteen (15) days of EPA's approval and acceptance of the easement and the title  
24 evidence, Settling Defendant shall update the title search and, if it is determined that nothing has  
25  
26

1 occurred since the effective date of the commitment to affect the title adversely, record the  
2 easement with the Recorder's Office or Registry of Deeds or other appropriate office of Chester  
3 County, Pennsylvania. Within thirty (30) days of recording the easement, Settling Defendant shall  
4 provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA,  
5 and a certified copy of the original recorded easement showing the clerk's recording stamps. If the  
6 easement is to be conveyed to the United States, the easement and title evidence (including final  
7 title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards  
8 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

9 27. If the Site, or any other property where access and/or land/water use restrictions are  
10 needed to implement this Consent Decree, is owned or controlled by persons other than the  
11 Settling Defendant, Settling Defendant shall use best efforts (as defined in Paragraph 28) to secure  
12 from such persons:

13 a. an agreement to provide access thereto for Settling Defendant, as well as for the  
14 United States on behalf of EPA, and the Commonwealth, as well as their representatives  
15 (including contractors), for the purpose of conducting any activity related to this Consent Decree  
16 including, but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree;

17 b. an agreement, enforceable by the Settling Defendant and the United States, to  
18 refrain from using the Site, or such other property, in any manner that would interfere with or  
19 adversely affect the implementation, integrity, or protectiveness of the remedial measures to be  
20 performed pursuant to this Consent Decree. Such restrictions include, but are not limited to those  
21 restrictions described in Paragraph 26; and

22 c. the execution and recordation in the Recorder's Office or Registry of Deeds or other  
23 appropriate land records office of Chester County, Pennsylvania, of an easement, running with the  
24 land, that (i) grants a right of access for the purpose of conducting any activity related to this



1 Consent Decree including, but not limited to, those activities listed in Paragraph 26(a) of this  
2 Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in  
3 Paragraph 26(b) of this Consent Decree, or other restrictions that EPA determines are necessary to  
4 implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to  
5 be performed pursuant to this Consent Decree. The access rights and/or rights to enforce  
6 land/water use restrictions shall be granted to (i) the United States, on behalf of EPA, and its  
7 representatives, and (ii) the State and its representatives. Within forty-five (45) days of entry of  
8 this Consent Decree, Settling Defendant shall submit to EPA for review and approval with respect  
9 to such property:

10 (1) A draft easement, in substantially the form attached hereto as Appendix D, that is  
11 enforceable under the laws of the Commonwealth of Pennsylvania; and

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

17 Within fifteen (15) days of EPA's approval and acceptance of the easement and the title  
18 evidence, Settling Defendant shall update the title search and, if it is determined that nothing has  
19 occurred since the effective date of the commitment to affect the title adversely, record the  
20 easement with the Recorder's Office or Registry of Deeds or other appropriate office of Chester  
21 County. Within thirty (30) days of recording the easement, Settling Defendant shall provide EPA  
22 with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified  
23 copy of the original recorded easement showing the clerk's recording stamps. If the easement is to  
24 be conveyed to the United States, the easement and title evidence (including final title evidence)

1 shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and  
2 approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

3 28. For purposes of Paragraph 27 of this Consent Decree, "best efforts" includes the payment  
4 of reasonable sums of money in consideration of access, access easements, land/water use  
5 restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien or  
6 encumbrance. If (a) any access or land/water use restriction agreements required by Paragraphs  
7 27(a) or 27(b) of this Consent Decree are not obtained within forty-five (45) days of the date of  
8 entry of this Consent Decree, (b) any access easements or restrictive easements required by  
9 Paragraph 27 © of this Consent Decree are not submitted to EPA in draft form within forty-five  
10 (45) days of the date of entry of this Consent Decree, or © Settling Defendant is unable to obtain  
11 an agreement pursuant to Paragraph 26.c.(1) or Paragraph 27.c.(1) from the holder of a prior lien  
12 or encumbrance to release or subordinate such lien or encumbrance to the easement being created  
13 pursuant to this Consent Decree within forty-five (45) days of the date of entry of this Consent  
14 Decree, Settling Defendant shall promptly notify the United States in writing, and shall include in  
15 that notification a summary of the steps that Settling Defendant has taken to attempt to comply  
16 with Paragraph 27 of this Consent Decree. The United States may, as it deems appropriate, assist  
17 Settling Defendant in obtaining access or land/water use restrictions, either in the form of  
18 contractual agreements or in the form of easements running with the land, or in obtaining the  
19 release or subordination of a prior lien or encumbrance. Settling Defendant shall reimburse the  
20 United States in accordance with the procedures in Section XVI (Payments for Response Costs),  
21 for all costs incurred, direct or indirect, by the United States in obtaining such access, land/water  
22 use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not  
23 limited to, the cost of attorney time and the amount of monetary consideration paid or just  
24 compensation.



1 approved by EPA; and (g) describe all activities undertaken in support of the Community  
2 Relations Plan during the previous month and those to be undertaken in the next six weeks.  
3 Settling Defendant shall submit these progress reports to EPA and the Commonwealth by the tenth  
4 day of every month following the lodging of this Consent Decree until EPA notifies the Settling  
5 Defendant pursuant to Paragraph 51.b of Section XIV (Certification of Completion). If requested  
6 by EPA, Settling Defendant shall also provide briefings for EPA to discuss the progress of the  
7 Work.

8 32. The Settling Defendant shall notify EPA of any change in the schedule described in the  
9 monthly progress report for the performance of any activity, including, but not limited to,  
10 implementation of work plans, no later than seven (7) days prior to the performance of the activity.  
11 Notwithstanding the foregoing, the Settling Defendant shall notify EPA of any change in the  
12 schedule described in the monthly progress reports for the performance of data collection no later  
13 than thirty (30) days prior to the performance of such activity.

14 33. Upon the occurrence of any event during performance of the Work that Settling  
15 Defendant is required to report pursuant to Section 103 of CERCLA or Section 304 of the  
16 Emergency Planning and Community Right-to-Know Act (EPCRA), Settling Defendant shall  
17 within twenty-four (24) hours of the onset of such event orally notify the EPA Project Coordinator  
18 or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project  
19 Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project  
20 Coordinator is available, the EPA Region III Hotline at (215) 814-3255. These reporting  
21 requirements are in addition to the reporting required by CERCLA § 103 or EPCRA § 304.

22 34. Within twenty (20) days of the onset of such an event, Settling Defendant shall furnish to  
23 Plaintiff a written report, signed by the Settling Defendant's Project Coordinator, setting forth the  
24 events which occurred and the measures taken, and to be taken, in response thereto. Within thirty

1 (30) days of the conclusion of such an event, Settling Defendant shall submit a report setting forth  
2 all actions taken in response thereto.

3 35. Settling Defendant shall submit three (3) copies of all plans, reports, and data required by  
4 the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to  
5 EPA in accordance with the schedules set forth in such plans.

6 Settling Defendant shall simultaneously submit three (3) copies of all such plans, reports, and  
7 data to the Commonwealth. Upon request by EPA, Settling Defendant shall submit in electronic  
8 form all portions of any report or other deliverable Settling Defendant is required to submit  
9 pursuant to the provisions of this Consent Decree.

10 36. All reports and other documents submitted by Settling Defendant to EPA (other than the  
11 monthly progress reports referred to above) which purport to document Settling Defendant's  
12 compliance with the terms of this Consent Decree shall be signed by a Duly Authorized  
13 Representative of the Settling Defendant.

#### 14 **XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS**

15 37. After review of any plan, report or other item which is required to be submitted for  
16 approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and  
17 comment by the Commonwealth, shall: (a) approve, in whole or in part, the submission; (b)  
18 approve the submission upon specified conditions; © modify the submission to cure the  
19 deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling  
20 Defendant modify the submission; or (e) any combination of the above. However, EPA shall not  
21 modify a submission without first providing Settling Defendant at least one notice of deficiency  
22 and an opportunity to cure within fourteen (14) days, or such other time as specified by EPA in  
23 such notice; except where to do so would cause serious disruption to the Work, or where previous  
24 submission(s) have been disapproved due to material defects and the deficiencies in the

1 submission under consideration indicate to EPA a bad faith lack of effort to submit an acceptable  
2 deliverable.

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

10 39. Upon receipt of a notice of disapproval pursuant to Paragraph 37(d), Settling  
11 Defendant shall, within fourteen (14) days, or such other time as specified by EPA in such notice,  
12 correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated  
13 penalties applicable to the submission, as provided in Section XX, shall accrue during the fourteen  
14 (14)-day period, or otherwise specified period, but shall not be payable unless the resubmission is  
15 disapproved or modified due to a material defect as provided in Paragraphs 40 and 41.

16 Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 37(d), Settling  
17 Defendant shall proceed, at the direction of EPA, to take any action required by any non-deficient  
18 portion of the submission. Implementation of any non-deficient portion of a submission shall not  
19 relieve Settling Defendant of any liability for stipulated penalties under Section XX (Stipulated  
20 Penalties).

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

1 modified or developed by EPA, subject only to their right to invoke the procedures set forth in  
2 Section XIX (Dispute Resolution).

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

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

## 17 **XII. PROJECT COORDINATORS**

18 43. The EPA Project Coordinator and Alternate Project Coordinator for this Site are:

19 **EPA Project Coordinator:**

20 James J. Feeney; (3HS22)  
21 U.S. Environmental Protection Agency  
22 1650 Arch Street  
23 Philadelphia, PA 19103  
24 (215) 814-3190 (phone)  
25 (215) 814-3002 (fax)

26  
27 **EPA Alternate Project Coordinator:**

28  
29 Linda R. Dietz; (3HS22)

1 U.S. Environmental Protection Agency  
2 1650 Arch Street  
3 Philadelphia, PA 19103  
4 (215) 814-3195 (phone)  
5 (215) 814-3002 (fax)  
6

7       Within twenty (20) days of lodging this Consent Decree, Settling Defendant will notify EPA,  
8 in writing, of the name, address and telephone number of their designated Project Coordinator and  
9 Alternate Project Coordinator. If a Project Coordinator or Alternate Project Coordinator initially  
10 designated is changed, the identity of the successor will be given to the other Parties at least five  
11 (5) working days before the changes occur, unless impracticable, but in no event later than the  
12 actual day the change is made. The Settling Defendant's Project Coordinator and Alternate  
13 Project Coordinator shall be subject to acceptance or disapproval by EPA and shall have the  
14 technical expertise sufficient to adequately oversee all aspects of the Work. The Settling  
15 Defendant's Project Coordinator and Alternate Project Coordinator shall not be an attorney for the  
16 Settling Defendant in this matter. The Settling Defendant's Project Coordinator and Alternate  
17 Project Coordinator may assign other representatives, including other contractors, to serve as a  
18 Site representative for oversight of performance of daily operations during remedial activities.

19       44. Plaintiffs may designate other representatives, including, but not limited to, EPA  
20 employees, and federal contractors and consultants, to observe and monitor the progress of any  
21 activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate  
22 Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM)  
23 and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In  
24 addition, EPA's Project Coordinator and Alternate Project Coordinator shall have authority,  
25 consistent with the National Contingency Plan, to halt any Work required by this Consent Decree  
26 and to take any necessary response action when s/he determines that conditions at the Site



1 constitute an emergency situation or may present an immediate threat to public health or welfare  
2 or the environment due to release or threatened release of Waste Material.

3 45. EPA's Project Coordinator and the Settling Defendant's Project Coordinator will meet,  
4 at a minimum, on a monthly basis, unless otherwise determined by EPA.

5 **XIII. ASSURANCE OF ABILITY TO COMPLETE WORK**

6 46. Within thirty (30) days of entry of this Consent Decree, Settling Defendant shall establish  
7 and maintain financial security in the amount of \$13,936,000 in one or more of the following  
8 forms:

- 9 a. A surety bond guaranteeing performance of the Work;
- 10 b. One or more irrevocable letters of credit equaling the total estimated cost of the  
11 Work;
- 12 c. A trust fund;
- 13 d. A guarantee to perform the Work by one or more parent corporations or  
14 subsidiaries, or by one or more unrelated corporations that have a substantial business relationship  
15 with the Settling Defendant;
- 16 e. A demonstration that the Settling Defendant satisfies the requirements of 40 C.F.R.  
17 § 264.143(f). Such financial security shall be maintained by the Settling Defendant until EPA  
18 agrees that the Work has been completed and issues a Certification of Completion in accordance  
19 with Paragraph 51.b.

20 47. If the Settling Defendant seeks to demonstrate the ability to complete the Work  
21 through a guarantee by a third party pursuant to Paragraph 46(d) of this Consent Decree, Settling  
22 Defendant shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. §  
23 264.143(f). If Settling Defendant seeks to demonstrate its ability to complete the Work by means  
24 of the financial test or the corporate guarantee pursuant to Paragraph 46(d) or (e), it shall resubmit

1 sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on  
2 the anniversary of the Effective Date. In the event that EPA, after a reasonable opportunity for  
3 review and comment by the Commonwealth, determines at any time that the financial assurances  
4 provided pursuant to this Section are inadequate, Settling Defendant shall, within thirty (30) days  
5 of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the  
6 other forms of financial assurance listed in Paragraph 46 of this Consent Decree. Settling  
7 Defendant's inability to demonstrate financial ability to complete the Work shall not excuse  
8 performance of any activities required under this Consent Decree.

9 48. If Settling Defendant can show that the estimated cost to complete the remaining Work  
10 has diminished below the amount set forth in Paragraph 46 above after lodging but before entry of  
11 this Consent Decree, the Consent Decree shall be modified to reflect the reduced amount.  
12 Thereafter, Settling Defendant may, on any anniversary date of entry of this Consent Decree, or at  
13 any other time agreed to by the Parties, reduce the amount of the financial security provided under  
14 this Section to the estimated cost of the remaining work to be performed. Settling Defendant shall  
15 submit a proposal for such reduction to EPA, in accordance with the requirements of this Section,  
16 and may reduce the amount of the security upon approval by EPA. In the event of a dispute,  
17 Settling Defendant may reduce the amount of the security in accordance with the final  
18 administrative or judicial decision resolving the dispute.

19 49. Settling Defendant may change the form of financial assurance provided under this  
20 Section at any time, upon notice to and approval by EPA, provided that the new form of assurance  
21 meets the requirements of this Section. In the event of a dispute, Settling Defendant may change  
22 the form of the financial assurance only in accordance with the final administrative or judicial  
23 decision resolving the dispute.

#### XIV. CERTIFICATION OF COMPLETION

##### 50. Completion of the Remedial Action

a. Within ninety (90) days after Settling Defendant concludes that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant and EPA. If, after the pre-certification inspection, the Settling Defendant still believes that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the Commonwealth, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within thirty (30) days of the inspection. In the report, a registered professional engineer and the Settling Defendant's Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a Duly Authorized Representative of a Settling Defendant or the Settling Defendant's Project Coordinator:

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity for review and comment by the Commonwealth, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendant in writing of the activities that must be undertaken by Settling Defendant pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards. Provided, however, that EPA may only require Settling Defendant to perform such

1 activities pursuant to this Paragraph to the extent that such activities are consistent with the  
2 “scope of the remedy selected in the ROD,” as that term is defined in Paragraph 14.b. EPA will set  
3 forth in the notice a schedule for performance of such activities consistent with the Consent  
4 Decree or require the Settling Defendant to submit a schedule to EPA for approval pursuant to  
5 Section XI (EPA Approval of Plans and Other Submissions). Settling Defendant shall perform all  
6 activities described in the notice in accordance with the specifications and schedules established  
7 pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set  
8 forth in Section XIX (Dispute Resolution).

9 b. If EPA concludes, based on the initial or any subsequent report requesting  
10 Certification of Completion and after a reasonable opportunity for review and comment by the  
11 Commonwealth, that the Remedial Action has been performed in accordance with this Consent  
12 Decree and that the Performance Standards have been achieved, EPA will so certify in writing to  
13 Settling Defendant. This certification shall constitute the Certification of Completion of the  
14 Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI  
15 (Covenants Not to Sue by Plaintiff). Certification of Completion of the Remedial Action shall not  
16 affect Settling Defendant’ obligations under this Consent Decree.

#### 17 51. Completion of the Work

18 a. Within ninety (90) days after Settling Defendant concludes that all phases of the  
19 Work (including O & M), have been fully performed, Settling Defendant shall schedule and  
20 conduct a pre-certification inspection to be attended by Settling Defendant and EPA. If, after the  
21 pre-certification inspection, the Settling Defendant still believes that the Work has been fully  
22 performed, Settling Defendant shall submit a written report by a registered professional engineer  
23 stating that the Work has been completed in full satisfaction of the requirements of this Consent

1 Decree. The report shall contain the following statement, signed by a Duly Authorized  
2 Representative of a Settling Defendant or the Settling Defendant's Project Coordinator:

3 "To the best of my knowledge, after thorough investigation, I certify that the information  
4 contained in or accompanying this submission is true, accurate and complete. I am aware  
5 that there are significant penalties for submitting false information, including the  
6 possibility of fine and imprisonment for knowing violations."  
7

8 If, after review of the written report, EPA, after reasonable opportunity for review and comment  
9 by the Commonwealth, determines that any portion of the Work has not been completed in  
10 accordance with this Consent Decree, EPA will notify Settling Defendant in writing of the  
11 activities that must be undertaken by Settling Defendant pursuant to this Consent Decree to  
12 complete the Work. Provided, however, that EPA may only require Settling Defendant to perform  
13 such activities pursuant to this Paragraph to the extent that such activities are consistent with the  
14 "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA will  
15 set forth in the notice a schedule for performance of such activities consistent with the Consent  
16 Decree or require the Settling Defendant to submit a schedule to EPA for approval pursuant to  
17 Section XI (EPA Approval of Plans and Other Submissions). Settling Defendant shall perform all  
18 activities described in the notice in accordance with the specifications and schedules established  
19 therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX  
20 (Dispute Resolution).

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

25 c. Subject to the provisions of Paragraph II, regarding Retention of Jurisdiction, the  
26 United States may petition the Court to terminate this Consent Decree at any time after Settling

1 Defendant certifies that all requirements of this Consent Decree have been met to the United  
2 States' satisfaction.

3 d. Settling Defendant may petition the Court, upon written notice to the United  
4 States, to terminate this Consent Decree when Settling Defendant is able to establish that: (1) it has  
5 completed all of the requirements and paid all penalties and interest that may be due under this  
6 Consent Decree, (2) there is no outstanding matter subject to dispute resolution, and (3) no  
7 enforcement action for this Consent Decree is pending.

8 i. The United States shall have 30 days to respond to such written notice. This  
9 Consent Decree may be terminated after the United States files with the Court  
10 a statement that it does not object to the termination of the Consent Decree.

11 ii. If the United States objects to such petition, the dispute resolution provisions of  
12 this Consent Decree shall be invoked, and the Consent Decree shall remain in  
13 effect pending resolution of the dispute by the parties or by the Court. In any  
14 dispute concerning termination of this Consent Decree, Settling Defendant  
15 shall bear the burden of proving that it has fully complied with the terms of this  
16 Consent Decree.

17 iii. The Court may, in its discretion, terminate the Consent Decree if the United  
18 States does not respond to Settling Defendant's written notice within 30 days  
19 after it is received by the United States.

20 The provisions providing Covenants Not to Sue by Plaintiff (Section XXI) and Contribution  
21 Protection (Section XXIII) shall survive termination of this Consent Decree indefinitely.

#### IV. EMERGENCY RESPONSE

1  
2       52. In the event of any action or occurrence during the performance of the Work which  
3 causes or threatens a release of Waste Material from the Site that constitutes an emergency  
4 situation or may present an immediate threat to public health or welfare or the environment,  
5 Settling Defendant shall, subject to Paragraph 53, immediately take all appropriate action to  
6 prevent, abate, or minimize such release or threat of release, and shall immediately notify the  
7 EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project  
8 Coordinator. If neither of these persons is available, the Settling Defendant shall notify the EPA  
9 Region III Hotline at (215) 814-3255. Settling Defendant shall take such actions in consultation  
10 with EPA's Project Coordinator or other available authorized EPA officer and in accordance with  
11 all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other  
12 applicable plans or documents developed pursuant to this Consent Decree. In the event that  
13 Settling Defendant fails to take appropriate response action as required by this Section, and EPA  
14 takes such action instead, Settling Defendant shall reimburse EPA all costs of the response action  
15 not inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs).

16       53. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit  
17 any authority of the United States to (a) take all appropriate action to protect human health and the  
18 environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste  
19 Material on, at, or from the Site, or (b) direct or order such action, or seek an order from the Court,  
20 to protect human health and the environment or to prevent, abate, respond to, or minimize an  
21 actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI  
22 (Covenants Not to Sue by Plaintiff).  
23  
24

## **XVI. PAYMENTS FOR RESPONSE COSTS**

### **54. Payments for Past Response Costs.**

Within thirty (30) days of the entry of this Consent Decree, Settling Defendant shall pay to EPA \$311,447.18 in payment for Past Response Costs. Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number \_\_\_\_, EPA Site/Spill ID No. 038C, and DOJ Case Number 90-11-3-08948. Payment shall be made in accordance with instructions provided to the Settling Defendant by the Financial Litigation Unit of the United States Attorney’s Office for the Eastern District of Pennsylvania following entry of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. Settling Defendant shall send notice that such payment has been made to the United States as specified in Section XXVI (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. At the time of payment, Settling Defendant shall send copies of the check(s) to the United States as specified in Section XXVI (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. The total amount to be paid by Settling Defendant pursuant to Subparagraph shall be deposited in the Foote Mineral Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used by EPA 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.

### **55. Payments for Future Response Costs.**

Settling Defendant shall pay to EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, the United States will send Settling Defendant a bill requiring payment that



1 includes a cost summary, setting forth direct and indirect costs incurred by EPA, DOJ, and their  
2 contractors. Settling Defendant shall make all payments within thirty (30) days of Settling  
3 Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 56.  
4 Settling Defendant shall make all payments required by this Paragraph by a certified or cashier's  
5 check or checks made payable to "EPA Hazardous Substance Superfund," and referencing the  
6 name and address of the party making the payment, EPA Site/Spill ID No. 038C, and DOJ Case  
7 Number 90-11-3-08948. Settling Defendant shall send the check(s) to United States  
8 Environmental Protection Agency, Region III, Attention: Superfund Accounting, P.O. Box  
9 360515, Pittsburgh, PA 15251-6515, and shall send copies of the check(s) to the United States as  
10 specified in Section XXVI (Notices and Submissions), and to the Docket Clerk (3RC00), United  
11 States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.  
12 The total amount to be paid by Settling Defendant pursuant to Subparagraph shall be deposited in  
13 the EPA Hazardous Substance Superfund.

14 56. Settling Defendant may contest payment of any Future Response Costs under Paragraph  
15 55 if they determine that the United States has made an accounting error or if they allege that a  
16 cost item that is included represents costs that are inconsistent with the NCP. Such objection shall  
17 be made in writing within thirty (30) days of receipt of the bill and must be sent to the United  
18 States pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically  
19 identify the contested Future Response Costs and the basis for objection. In the event of an  
20 objection, the Settling Defendant shall within the 30-day period pay all uncontested Future  
21 Response Costs to the United States in the manner described in Paragraph 55. Simultaneously, the  
22 Settling Defendant shall establish an interest-bearing escrow account in a federally-insured bank  
23 duly chartered in the Commonwealth of Pennsylvania and remit to that escrow account funds  
24 equivalent to the amount of the contested Future Response Costs. The Settling Defendant shall

1 send to the United States, as provided in Section XXVI (Notices and Submissions), a copy of the  
2 transmittal letter and check paying the uncontested Future Response Costs, and a copy of the  
3 correspondence that establishes and funds the escrow account, including, but not limited to,  
4 information containing the identity of the bank and bank account under which the escrow account  
5 is established as well as a bank statement showing the initial balance of the escrow account.

6 Simultaneously with establishment of the escrow account, the Settling Defendant shall initiate the  
7 Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails  
8 in the dispute, within five (5) days of the resolution of the dispute, the Settling Defendant shall pay  
9 the sums due, with accrued interest, to the United States in the manner described in Paragraph 55.

10 If the Settling Defendant prevails concerning any aspect of the contested costs, the Settling  
11 Defendant shall pay that portion of the costs, plus associated accrued interest, for which it did not  
12 prevail to the United States in the manner described in Paragraph 55. Settling Defendant shall be  
13 disbursed any balance of the escrow account. The dispute resolution procedures set forth in this  
14 Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall  
15 be the exclusive mechanisms for resolving disputes regarding the Settling Defendant's obligation  
16 to reimburse the United States for its Future Response Costs.

17 57. In the event that the payments required by Subparagraph 54 are not made within  
18 thirty (30) days of the Effective Date or the payments required by Paragraph 55 are not made  
19 within thirty (30) days of the Settling Defendant's receipt of the bill, Settling Defendant shall pay  
20 Interest on the unpaid balance. The Interest to be paid on Past Response Costs under this  
21 Paragraph shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall  
22 begin to accrue on the date of the bill, and shall accrue through the date of the Settling Defendant's  
23 payment. Payments of Interest made under this Paragraph shall be in addition to such other  
24 remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to make timely

1 payments under this Section including, but not limited to, payment of stipulated penalties pursuant  
2 to Paragraph 72. The Settling Defendant shall make all payments required by this Paragraph in the  
3 manner described in Paragraph 55.

#### 4 **XVII. INDEMNIFICATION AND INSURANCE**

##### 5 **58. Indemnification by Settling Defendant**

6 a. The United States does not assume any liability by entering into this Consent  
7 Decree or by virtue of any designation of Settling Defendant as EPA's authorized representative  
8 under Section 104(e) of CERCLA. Settling Defendant shall indemnify, save, and hold harmless  
9 the United States and its officials, agents, employees, contractors, subcontractors, or  
10 representatives for or from any and all claims or causes of action arising from, or on account of,  
11 negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors,  
12 employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its  
13 control, in carrying out activities pursuant to this Consent Decree, including, but not limited to,  
14 any claims arising from any designation of Settling Defendant as EPA's authorized representatives  
15 under Section 104(e) of CERCLA. Further, the Settling Defendant agrees to pay the United States  
16 all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and  
17 settlement arising from, or on account of, claims made against the United States based on  
18 negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors,  
19 employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its  
20 control, in carrying out activities pursuant to this Consent Decree. The United States shall not be  
21 held out as a party to any contract entered into by or on behalf of Settling Defendant in carrying  
22 out activities pursuant to this Consent Decree. Neither the Settling Defendant nor any such  
23 contractor shall be considered an agent of the United States.

1           b. The United States shall give Settling Defendant notice of any claim for which the  
2 United States plans to seek indemnification pursuant to Paragraph 58.a., and shall consult with  
3 Settling Defendant prior to settling such claim.

4           59. Settling Defendant waives all claims against the United States for damages or  
5 reimbursement or for set-off of any payments made or to be made to the United States, arising  
6 from or on account of any contract, agreement, or arrangement between Settling Defendant and  
7 any person for performance of Work on or relating to the Site, including, but not limited to, claims  
8 on account of construction delays. In addition, Settling Defendant shall indemnify and hold  
9 harmless the United States with respect to any and all claims for damages or reimbursement  
10 arising from or on account of any contract, agreement, or arrangement between any one or more of  
11 Settling Defendant and any person for performance of Work on or relating to the Site, including,  
12 but not limited to, claims on account of construction delays.

13           60. No later than fifteen (15) days before commencing any on-site Work, Settling  
14 Defendant shall secure, and shall maintain until the first anniversary of EPA's Certification of  
15 Completion of the Remedial Action pursuant to Paragraph 50.b. of Section XIV (Certification of  
16 Completion) comprehensive general liability insurance with limits of five million dollars,  
17 combined single limit, and automobile liability insurance with limits of \$500,000, combined single  
18 limit, naming the United States as an additional insured. In addition, for the duration of this  
19 Consent Decree, Settling Defendant shall satisfy, or shall ensure that its contractors or  
20 subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's  
21 compensation insurance for all persons performing the Work on behalf of Settling Defendant in  
22 furtherance of this Consent Decree. Prior to commencement of the Work under this Consent  
23 Decree, Settling Defendant shall provide to EPA certificates of such insurance and a copy of each  
24 insurance policy. Settling Defendant shall resubmit such certificates and copies of policies each

1 year on the anniversary of the Effective Date of this Consent Decree. If Settling Defendant  
2 demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains  
3 insurance equivalent to that described above, or insurance covering the same risks but in a lesser  
4 amount, then, with respect to that contractor or subcontractor, Settling Defendant need provide  
5 only that portion of the insurance described above which is not maintained by the contractor or  
6 subcontractor. Settling Defendant may satisfy the provisions of this Paragraph 60 if it submits to  
7 EPA for approval one of the financial assurance mechanisms of Section XIII (Assurance of Ability  
8 to Complete Work) in at least the amounts stated in this Paragraph 60 demonstrating that Settling  
9 Defendant is able to pay any claims arising out of Settling Defendant's performance of their  
10 obligations under this Consent Decree. Such financial assurance mechanism shall meet all of the  
11 requirements of Section XIII (Assurance of Ability to Complete Work). If Settling Defendant  
12 seeks to utilize the mechanisms set forth in Section XIII (Assurance of Ability to Complete Work)  
13 to satisfy the provisions of this Paragraph 60, it must demonstrate an ability to pay the amounts  
14 required under this Paragraph, above and beyond that required by the obligations of Section XIII  
15 (Assurance of Ability to Complete Work).

#### 16 **XVIII. FORCE MAJEURE**

17 61. "Force majeure," for purposes of this Consent Decree, is defined as any event arising  
18 from causes beyond the control of the Settling Defendant, of any entity controlled by Settling  
19 Defendant, or of Settling Defendant's contractors, that delays or prevents the performance of any  
20 obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the  
21 obligation. The requirement that the Settling Defendant exercise "best efforts to fulfill the  
22 obligation" includes using best efforts to anticipate any potential force majeure event and best  
23 efforts to address the effects of any potential force majeure event (a) as it is occurring, and (b)  
24 following the potential force majeure event, such that the delay is minimized to the greatest extent

1 possible. "Force Majeure" does not include financial inability to complete the Work, a failure to  
2 attain the Performance Standards, or increased costs.

3 62. If any event occurs or has occurred that may delay the performance of any obligation  
4 under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendant  
5 shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project  
6 Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director  
7 of the EPA Region III Hazardous Site Cleanup Division, within forty-eight (48) hours of when  
8 Settling Defendant first knew that the event might cause a delay. Within five (5) days thereafter,  
9 Settling Defendant shall provide in writing to EPA an explanation and description of the reasons  
10 for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or  
11 minimize the delay; a schedule for implementation of any measures to be taken to prevent or  
12 mitigate the delay or the effect of the delay; the Settling Defendant's rationale for attributing such  
13 delay to a force majeure event if they intend to assert such a claim; and a statement as to whether,  
14 in the opinion of the Settling Defendant, such event may cause or contribute to an endangerment to  
15 public health, welfare or the environment. The Settling Defendant shall include with any notice all  
16 available documentation supporting its claim that the delay was attributable to a force majeure.  
17 Failure to comply with the above requirements shall preclude Settling Defendant from asserting  
18 any claim of force majeure for that event for the period of time of such failure to comply, and for  
19 any additional delay caused by such failure. Settling Defendant shall be deemed to know of any  
20 circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling  
21 Defendant's contractors knew or should have known.

22 63. If EPA agrees that the delay or anticipated delay is attributable to a force majeure  
23 event, the time for performance of the obligations under this Consent Decree that are affected by  
24 the force majeure event will be extended by EPA for such time as is necessary to complete those

1 obligations on an expedited basis. An extension of the time for performance of the obligations  
2 affected by the force majeure event shall not, of itself, extend the time for performance of any  
3 other obligation. If EPA does not agree that the delay or anticipated delay has been or will be  
4 caused by a force majeure event, EPA will notify the Settling Defendant in writing of its decision.  
5 If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling  
6 Defendants in writing of the length of the extension, if any, for performance of the obligations  
7 affected by the force majeure event.

8 64. If the Settling Defendant elects to invoke the dispute resolution procedures set forth in  
9 Section XIX (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of  
10 EPA's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating  
11 by a preponderance of the evidence that the delay or anticipated delay has been or will be caused  
12 by a force majeure event, that the duration of the delay or the extension sought was or will be  
13 warranted under the circumstances, that best efforts were exercised to avoid and mitigate the  
14 effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 61  
15 and 62, above. If Settling Defendant carries this burden, the delay at issue shall be deemed not to  
16 be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to  
17 EPA and the Court.

#### 18 **XIX. DISPUTE RESOLUTION**

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

1       66. Any dispute which arises under or with respect to this Consent Decree shall in the first  
2 instance be the subject of informal negotiations between the parties to the dispute. The period for  
3 informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it  
4 is modified by written agreement of the parties to the dispute. The dispute shall be considered to  
5 have arisen when one party sends the other parties a written Notice of Dispute.

6       67. a. In the event that the parties cannot resolve a dispute by informal negotiations under  
7 the preceding Paragraph, then the position advanced by EPA shall be considered binding unless,  
8 within ten (10) days after the conclusion of the informal negotiation period, Settling Defendant  
9 invoke the formal dispute resolution procedures of this Section by serving on the United States a  
10 written Statement of Position on the matter in dispute, including, but not limited to, any factual  
11 data, analysis or opinion supporting that position and any supporting documentation relied upon by  
12 the Settling Defendant. The Statement of Position shall specify the Settling Defendant's position  
13 as to whether formal dispute resolution should proceed under Paragraph 68 or Paragraph 69.

14       b. Within fourteen (14) days after receipt of Settling Defendant's Statement of  
15 Position, EPA will serve on Settling Defendant its Statement of Position, including, but not limited  
16 to, any factual data, analysis, or opinion supporting that position and all supporting documentation  
17 relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal  
18 dispute resolution should proceed under Paragraph 68 or 69. Within seven (7) days after receipt of  
19 EPA's Statement of Position, Settling Defendant may submit a Reply.

20       c. If there is disagreement between EPA and the Settling Defendant as to whether  
21 dispute resolution should proceed under Paragraph 68 or 69, the parties to the dispute shall follow  
22 the procedures set forth in the Paragraph determined by EPA to be applicable. However, if the  
23 Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine



1 which Paragraph is applicable in accordance with the standards of applicability set forth in  
2 Paragraphs 68 and 69.

3 68. Formal dispute resolution for disputes pertaining to the selection or adequacy of any  
4 response action and all other disputes that are accorded review on the administrative record under  
5 applicable principles of administrative law shall be conducted pursuant to the procedures set forth  
6 in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes,  
7 without limitation: (i) the adequacy or appropriateness of plans, procedures to implement plans, or  
8 any other items requiring approval by EPA under this Consent Decree; and (ii) the adequacy of the  
9 performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent  
10 Decree shall be construed to allow any dispute by Settling Defendant regarding the validity of the  
11 ROD's provisions.

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

16 b. The Director of the Hazardous Site Cleanup Division, EPA Region III, will issue a  
17 final administrative decision resolving the dispute based on the administrative record described in  
18 Paragraph 68.a. This decision shall be binding upon the Settling Defendant, subject only to the  
19 right to seek judicial review pursuant to Paragraph 68.c. and d.

20 c. Any administrative decision made by EPA pursuant to Paragraph 68.b. shall be  
21 reviewable by this Court, provided that a motion for judicial review of the decision is filed by the  
22 Settling Defendant with the Court and served on all Parties within ten (10) days of receipt of  
23 EPA's decision. The motion shall include a description of the matter in dispute, the efforts made  
24 by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute

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

3 d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall  
4 have the burden of demonstrating that the decision of the Director of the Hazardous Site Cleanup  
5 Division, EPA Region III, is arbitrary and capricious or otherwise not in accordance with law.  
6 Judicial review of EPA's decision shall be on the administrative record compiled pursuant to  
7 Paragraph 68.a.

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

11 a. Following receipt of Settling Defendant's Statement of Position submitted pursuant  
12 to Paragraph 67, the Director of the Hazardous Site Cleanup Division, EPA Region III, will issue a  
13 final decision resolving the dispute. The Director's decision shall be binding on the Settling  
14 Defendant unless, within ten (10) days of receipt of the decision, the Settling Defendant files with  
15 the Court and serves on the parties a motion for judicial review of the decision setting forth the  
16 matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the  
17 schedule, if any, within which the dispute must be resolved to ensure orderly implementation of  
18 the Consent Decree. The United States may file a response to Settling Defendant's motion.

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

22 70. The invocation of formal dispute resolution procedures under this Section shall not  
23 extend, postpone, or affect in any way any obligation of the Settling Defendant under this Consent  
24 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 79. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

## **XX. STIPULATED PENALTIES**

71. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 72 and 73 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 Defendant shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, 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.

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

<i>Penalty Per Violation Per Day</i>	<i>Period of Noncompliance</i>
\$2,500.00	1 <sup>st</sup> through 14 <sup>th</sup> day
\$5,000.00	15 <sup>th</sup> through 30 <sup>th</sup> day
\$7,500.00	31 <sup>st</sup> day and beyond

b. Failure to comply with requirements of Section VI (Performance of the Work by Settling Defendant), Section VII (Remedy Review), Section VIII (Quality Assurance, Sampling, and Data Analysis), Section XI (EPA Approval of Plans and Other Submissions), Section XV (Emergency Response), and Section XVI (Payments for Response Costs).

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

<i>Penalty Per Violation Per Day</i>	<i>Period of Noncompliance</i>
\$ 1,000.00	1 <sup>st</sup> through 14 <sup>th</sup> day
\$ 2,000.00	15 <sup>th</sup> through 30 <sup>th</sup> day
\$ 3,000.00	31 <sup>st</sup> day and beyond

3  
4  
5  
6  
7  
8           b. All requirements of this Consent Decree that are not identified in Paragraph 72(b) of  
9 this Consent Decree.

10          74.    In the event that EPA assumes performance of a portion or all of the Work pursuant to  
11 Paragraph 87 of Section XXI (Covenants Not to Sue by Plaintiff), Settling Defendant shall be  
12 liable for a stipulated penalty in the amount of \$50,000.

13          75.    All penalties shall begin to accrue on the day after the complete performance is due or  
14 the day a violation occurs, and shall continue to accrue through the final day of the correction of  
15 the noncompliance or completion of the activity. However, stipulated penalties shall not accrue:  
16 (a) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other  
17 Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such  
18 submission until the date that EPA notifies Settling Defendant of any deficiency; (b) with respect  
19 to a decision by the Director of the Hazardous Site Cleanup Division, EPA Region III, under  
20 Paragraph 68.b. or 69.a. of Section XIX (Dispute Resolution), during the period, if any, beginning  
21 on the 21st day after the date that Settling Defendant's reply to EPA's Statement of Position is  
22 received until the date that the Director of the Hazardous Site Cleanup Division, EPA Region III,  
23 issues a final decision regarding such dispute; or with respect to judicial review by this Court of  
24 any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the  
25 31st day after the Court's receipt of the final submission regarding the dispute until the date that

1 the Court issues a final decision regarding such dispute. Nothing herein shall prevent the  
2 simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

8 77. All penalties accruing under this Section shall be due and payable to the United States  
9 within thirty (30) days of the Settling Defendant's receipt from EPA of a demand for payment of  
10 the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section  
11 XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by  
12 certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be  
13 mailed to the United States Environmental Protection Agency, Region III, Attention: Superfund  
14 Accounting, P.O. Box 360515, Pittsburgh, PA 125251-6515, shall indicate that the payment is for  
15 stipulated penalties, and shall reference the EPA Region and Site/Spill ID #038C, the DOJ Case  
16 Number 90-11-3-08948, and the name and address of the party making payment. Copies of  
17 check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to  
18 the United States as provided in Section XXVI (Notices and Submissions), and to the Docket  
19 Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street,  
20 Philadelphia, PA 19103.

21  
22 78. The payment of penalties shall not alter in any way Settling Defendant's obligation to  
23 complete the performance of the Work required under this Consent Decree.

24 79. Penalties shall continue to accrue as provided in Paragraph 75 during any dispute  
25 resolution period, but need not be paid until the following:

1           a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed  
2 to this Court, accrued penalties determined to be owing shall be paid to EPA within fifteen (15)  
3 days of the agreement or the receipt of EPA's decision or order;

4           b. If the dispute is appealed to this Court and the United States prevails in whole or in  
5 part, Settling Defendant shall pay all accrued penalties determined by the Court to be owed to EPA  
6 within sixty (60) days of receipt of the Court's decision or order, except as provided in  
7 Subparagraph c below;

8           c. If the District Court's decision is appealed by any Party, Settling Defendant shall  
9 pay all accrued penalties determined by the District Court to be owing to the United States into an  
10 interest-bearing escrow account within sixty (60) days of receipt of the Court's decision or order.  
11 Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days.  
12 Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay  
13 the balance of the account to EPA or to Settling Defendant to the extent that it prevails.

14       80.    If Settling Defendant fails to pay stipulated penalties when due, the United States may  
15 institute proceedings to collect the penalties, as well as interest. Settling Defendant shall pay  
16 interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant  
17 to Paragraph 77. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in  
18 any way limiting the ability of the United States to seek any other remedies or sanctions available  
19 by virtue of Settling Defendant's violation of this Decree or of the statutes and regulations upon  
20 which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA.  
21 Provided, however, that for any particular violation of this Consent Decree, the United States shall  
22 be limited to either demanding stipulated penalties pursuant to this Section XX of the Consent  
23 Decree or pursuing civil penalties pursuant to Section 122(l) of CERCLA, except in the case of a  
24 willful violation of the Consent Decree.

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

4                   **XXI. COVENANTS AND RESERVATIONS BY PLAINTIFF**

5       82.     Covenants not to sue by Plaintiff

6       a. In consideration of the actions that will be performed and the payments that will be made  
7 by the Settling Defendant under the terms of the Consent Decree, and except as specifically  
8 provided in Paragraphs 83, 84, and 86 of this Section, the United States covenants not to sue or to  
9 take administrative action relating to the Site against Settling Defendants pursuant to Sections 106  
10 and 107(a) of CERCLA relating to the Site.

11       b. Except with respect to future liability, these covenants not to sue shall take effect upon  
12 the receipt by EPA of the payments required by Paragraph 54 of Section XVI (Payments for  
13 Response Costs). With respect to future liability, these covenants not to sue shall take effect upon  
14 Certification of Completion of Remedial Action by EPA pursuant to Paragraph 50.b of Section  
15 XIV (Certification of Completion). These covenants not to sue are conditioned upon the  
16 satisfactory performance by Settling Defendant of its obligations under this Consent Decree.  
17 These covenants not to sue extend only to the Settling Defendant and its successors and assigns,  
18 solely to the extent that liability of the latter derives solely from the fact that they are a successor  
19 or assign of one of the signatories to this agreement.

20       83.     United States' Pre-Certification Reservations.

21       Notwithstanding any other provision of this Consent Decree, the United States reserves, and  
22 this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a  
23 new action, or to issue an administrative order seeking to compel Settling Defendant (1) to

1 perform further response actions relating to the Site or (2) to reimburse the United States for  
2 additional costs of response if, prior to Certification of Completion of the Remedial Action:  
3 (i) conditions at the Site, previously unknown to EPA, are discovered, or  
4 (ii) information, previously unknown to EPA, is received, in whole or in part,  
5 and EPA determines that these previously unknown conditions or information together with any  
6 other relevant information indicates that the Remedial Action is not protective of human health or  
7 the environment.

8 84. United States' Post-Certification Reservations. Notwithstanding any other provision  
9 of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice  
10 to, the right to institute proceedings in this action or in a new action, or to issue an administrative  
11 order seeking to compel Settling Defendant (1) to perform further response actions relating to the  
12 Site or (2) to reimburse the United States for additional costs of response if, subsequent to  
13 Certification of Completion of the Remedial Action:

14 (i) conditions at the Site, previously unknown to EPA, are discovered, or  
15 (ii) information, previously unknown to EPA, is received,  
16 in whole or in part, and EPA determines that these previously unknown  
17 conditions or this information together with other relevant information indicate that the Remedial  
18 Action is not protective of human health or the environment.

19 85. For purposes of Paragraph 83, the information and the conditions known to EPA shall  
20 include only that information and those conditions known to EPA as of the date the ROD was  
21 signed and set forth in the Record of Decision for the Site and the administrative record supporting  
22 the Record of Decision. For purposes of Paragraph 84, the information and the conditions known  
23 to EPA shall include only that information and those conditions known to EPA as of the date of  
24 Certification of Completion of the Remedial Action and set forth in the Record of Decision, the



1 administrative record supporting the Record of Decision, the post-ROD administrative record, or  
2 in any information received by EPA pursuant to the requirements of this Consent Decree prior to  
3 Certification of Completion of the Remedial Action.

4 86. General reservations of rights. The covenants not to sue set forth above do not pertain  
5 to any matters other than those expressly specified in Paragraph 82. The United States reserves,  
6 and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect  
7 to all matters not expressly included within Plaintiffs' covenant not to sue. Notwithstanding any  
8 other provision of this Consent Decree, the United States reserves all rights against Settling  
9 Defendant with respect to:

10 (1) claims based on a failure by Settling Defendant to meet a requirement of this  
11 Consent Decree;

12 (2) liability arising from the past, present, or future disposal, release, or threat of  
13 release of Waste Material outside of the Site;

14 (3) liability based upon the Settling Defendant's transportation, treatment, storage, or  
15 disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste  
16 Material at or in connection with the Site, other than as provided in the ROD, the Work, or  
17 otherwise ordered by EPA, after signature of this Consent Decree by the Settling Defendant;

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

20 (5) criminal liability;

21 (6) liability for violations of federal or state law which occur during or after  
22 implementation of the Remedial Action; and

23 (7) liability for costs incurred by the Agency for Toxic Substances and Disease  
24 Registry related to the Site that are not included in Appendix A.

1           87.    Work Takeover. In the event EPA determines that Settling Defendant has ceased  
2 implementation of any portion of the Work, is seriously or repeatedly deficient or late in its  
3 performance of the Work, or is implementing the Work in a manner which may cause an  
4 endangerment to human health or the environment, EPA may assume the performance of all or any  
5 portions of the Work as EPA determines necessary. Settling Defendant may invoke the procedures  
6 set forth in Section XIX (Dispute Resolution), Paragraph 68, to dispute EPA's determination that  
7 takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in  
8 performing the Work pursuant to this Paragraph shall be considered Future Response Costs that  
9 Settling Defendant shall pay pursuant to Section XVI (Payment for Response Costs).

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

12                           **XXII. COVENANTS BY SETTLING DEFENDANT**

13           89.    Covenant Not to Sue. Subject to the reservations in Paragraph 90, Settling  
14 Defendant hereby covenants not to sue and agree not to assert any claims or causes of action  
15 against the United States with respect to the Site, Past and Future Response Costs as defined  
16 herein, or this Consent Decree, including, but not limited to:

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

20                   b. any claims against the United States, including any department, agency or  
21 instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or

22                   c. any claims arising out of response actions at or in connection with the Site,  
23 including any claim under the United States Constitution, the Commonwealth's Constitution, the

1 Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or  
2 at common law.

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

16 91. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a  
17 claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R.  
18 § 300.700(d).

19 92. Settling Defendant agrees not to assert any claims and to waive all claims or causes  
20 of action that it may have for all matters relating to the Site, including for contribution, against any  
21 person where the person's liability to Settling Defendant with respect to the Site is based solely on  
22 having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous  
23 substances at the Site, or having accepted for transport for disposal or treatment of hazardous  
24 substances at the Site if: the materials contributed by such person to the Site containing hazardous

1 substances did not exceed the greater of: 0.002% of the total volume of waste at the Site, or 110  
2 gallons of liquid materials, or 200 pounds of solid materials. This waiver shall not apply to any  
3 claim or cause of action against any person meeting the above criteria if EPA has determined that  
4 the materials contributed to the Site by such person contributed or could contribute significantly to  
5 the costs of response at the Site. This waiver also shall not apply with respect to any defense,  
6 claim, or cause of action that Settling Defendant may have against any person if such person  
7 asserts a claim or cause of action relating to the Site against Settling Defendant.

### 8 **XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

9 93. Except as provided in Paragraph 92(a) (Waiver of Claims Against De Micromis  
10 Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any  
11 cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not  
12 be construed to waive or nullify any rights that any person not a signatory to this decree may have  
13 under applicable law. Except as provided in Paragraph 92(a) (Waiver of Claims Against De  
14 Micromis Parties), each of the Parties expressly reserves any and all rights (including, but not  
15 limited to, any right to contribution), defenses, claims, demands, and causes of action which each  
16 Party may have with respect to any matter, transaction, or occurrence relating in any way to the  
17 Site against any person not a Party hereto.

18 94. The Parties agree, and by entering this Consent Decree this Court finds, that the  
19 Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or  
20 claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed  
21 in this Consent Decree. For the purposes of this Consent Decree, the term "Matters Addressed"  
22 includes all Past Response Costs and all Future Response Costs incurred and to be incurred by any  
23 person with respect to the Site and all response actions taken and to be taken by any Party to this  
24 Consent Decree with respect to the Site. Matters Addressed does not include the matters reserved

1 by the United States in Section XXI (Covenants Not to Sue by Plaintiffs).

2 95. The Settling Defendant agrees that with respect to any suit or claim for contribution  
3 brought by it for matters related to this Consent Decree it will notify the United States in writing  
4 no later than sixty (60) days prior to the initiation of such suit or claim.

5 96. The Settling Defendant also agrees that with respect to any suit or claim for  
6 contribution brought against it for matters related to this Consent Decree it will notify in writing  
7 the United States within ten (10) days of service of the complaint on them. In addition, Settling  
8 Defendant shall notify the United States within ten (10) days of service or receipt of any Motion  
9 for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case  
10 for trial.

11 97. In any subsequent administrative or judicial proceeding initiated by the United  
12 States for injunctive relief, recovery of response costs, or other appropriate relief relating to the  
13 Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon  
14 the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other  
15 defenses based upon any contention that the claims raised by the United States in the subsequent  
16 proceeding were or should have been brought in the instant case; provided, however, that nothing  
17 in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI  
18 (Covenants Not to Sue by Plaintiff).

19 **XXIV. ACCESS TO INFORMATION**

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

1 Defendant shall also make available to EPA, for purposes of investigation, information gathering,  
2 or testimony, its employees, agents, or representatives with knowledge of relevant facts  
3 concerning the performance of the Work.

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

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

23 100. No claim of confidentiality shall be made with respect to any data, including, but  
24 not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or

1 engineering data, or any other documents or information evidencing conditions at or around the  
2 Site

### 3 **XXV. RETENTION OF RECORDS**

4 101. Until ten (10) years after the Settling Defendant's receipt of EPA's notification  
5 pursuant to Paragraph 51.b of Section XIV (Certification of Completion of the Work), Settling  
6 Defendant shall preserve and retain all non-identical copies of records and documents (including  
7 records or documents in electronic form) now in its possession or control or which comes into its  
8 possession or control that relates in any manner to its liability under CERCLA with respect to the  
9 Site, provided, however, that Settling Defendant must retain, in addition, all documents and  
10 records that relate to the liability of any other person under CERCLA with respect to the Site.

11 Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the  
12 same period of time specified above, all non-identical copies of the last draft or final version of  
13 any documents or records (including documents or records in electronic form) now in its  
14 possession or control or which come into its possession or control that relate in any manner to the  
15 performance of the Work, provided, however, that Settling Defendant (and its contractors and  
16 agents) must retain, in addition, copies of all data generated during the performance of the Work  
17 and not contained in the aforementioned documents required to be retained. Each of the above  
18 record retention requirements shall apply regardless of any corporate retention policy to the  
19 contrary.

20 102. At the conclusion of this document retention period, Settling Defendant shall notify  
21 the United States at least ninety (90) days prior to the destruction of any such records or  
22 documents, and, upon request by the United States, Settling Defendant shall deliver any such  
23 records or documents to EPA. If the United States has not responded to Settling Defendant's  
24 notice prior to the time Settling Defendant intends to destroy the records or documents, Settling

1 Defendant shall deliver all such records and documents to EPA no earlier than ten (10) days after  
2 providing an additional written notice that such records and documents will be delivered, unless  
3 EPA provides otherwise after receiving such notice. The Settling Defendant may assert that  
4 certain documents, records and other information are privileged under the attorney-client privilege  
5 or any other privilege recognized by federal law. If the Settling Defendant asserts such a privilege,  
6 it shall provide the Plaintiff with the following: (1) the title of the document, record, or  
7 information; (2) the date of the document, record, or information; (3) the name and title of the  
8 author of the document, record, or information; (4) the name and title of each addressee and  
9 recipient; (5) a description of the subject of the document, record, or information; and (6) the  
10 privilege asserted by Settling Defendant. However, no documents, reports, or other information  
11 created or generated pursuant to the requirements of the Consent Decree shall be withheld on the  
12 grounds that they are privileged.

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

## 20 **XXVI. NOTICES AND SUBMISSIONS**

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



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

4  
5 As to the United States:

6  
7 Chief, Environmental Enforcement Section  
8 Environment and Natural Resources Division  
9 U.S. Department of Justice  
10 P.O. Box 7611  
11 Washington, D.C. 20044-7611

12 Re: DOJ # 90-11-3-08948 \_\_\_\_\_

13  
14 and

15  
16 Bonnie Pugh Winkler  
17 Senior Assistant Regional Counsel (3RC44)  
18 United States Environmental Protection Agency  
19 Region III  
20 1650 Arch Street  
21 Philadelphia, PA 19103

22  
23 As to EPA:

24  
25 James Feeney  
26 EPA Remedial Project Manager (3HS22)  
27 United States Environmental Protection Agency  
28 Region III  
29 1650 Arch Street  
30 Philadelphia, PA 19103

31  
32 [As to the Commonwealth:

33  
34 Stephan Sinding  
35 Environmental Cleanup Program Manager  
36 Pennsylvania Department of Environmental Protection  
37 Southeast Regional Office  
38 2 East Main Street  
39 Norristown, PA 19401

40  
41 As to the Settling Defendant:

42  
43 Arnon E. Garonzik  
44 ECOR Solutions, Inc.  
45 1075 Andrew Drive, Suite I

1 West Chester, PA 19380  
2

3 **XXVII. EFFECTIVE DATE**

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

6 **XXVIII. RETENTION OF JURISDICTION**

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

13 **XXIX. APPENDICES**

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

16 "Appendix A" is the Cost Report, dated March 6, 2006.

17 "Appendix B" is the ROD.

18 "Appendix C" is the Site Figure.

19 "Appendix D" is the Draft Easement as per Paragraph 26(c)(1).

20 "Appendix E" is the letter that states that all work performed at the Site has been performed in  
21 accordance with the ROD as per Paragraph M, Section I.  
22

**XXX. COMMUNITY RELATIONS**

1  
2 108. Settling Defendant shall propose to EPA their participation in the community relations  
3 plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendant  
4 under the Plan. Settling Defendant shall also cooperate with EPA in providing information  
5 regarding the Work to the public. As requested by EPA, Settling Defendant shall participate in the  
6 preparation of such information for dissemination to the public and in public meetings which may  
7 be held or sponsored by EPA to explain activities at or relating to the Site.

**XXXI. MODIFICATION**

8  
9 109. Schedules specified in this Consent Decree for completion of the Work may be  
10 modified by agreement of the EPA Project Coordinator and the Settling Defendant. All such  
11 modifications shall be made in writing.

12 110. Except as otherwise provided in this Paragraph, no modifications shall be made to  
13 provisions of this Consent Decree without written notification to and written approval of the  
14 United States, Settling Defendant, and the Court. Prior to providing its approval to any  
15 modification to the provisions of this Consent Decree, the United States will provide the  
16 Commonwealth with a reasonable opportunity to review and comment on the proposed  
17 modification. Modifications to the Remedial Design Work Plan, Remedial Action Work Plan, and  
18 any other plan approved by EPA under this Consent Decree that do not materially alter the  
19 requirements of those documents may be made by written agreement between the EPA Project  
20 Coordinator, after providing the Commonwealth with a reasonable opportunity to review and  
21 comment on the proposed modification, and the Settling Defendant. Modifications to the Work  
22 made pursuant to Paragraph 14 (“Modification of the Work”) may be made by EPA. Nothing in  
23 this Decree shall be deemed to alter the Court’s power to enforce, supervise, or approve  
24 modifications to this Consent Decree.

1                   **XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

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

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

11                   **XXXIII. SIGNATORIES/SERVICE**

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

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

19           115. Each Settling Defendant shall identify, on the attached signature page, the name,  
20 address, and telephone number of an agent who is authorized to accept service of process by mail  
21 with respect to all matters arising under or relating to this Consent Decree. Settling Defendant  
22 hereby agrees to accept service in that manner and to waive the formal service requirements set  
23 forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court,  
24 including, but not limited to, service of a summons. The parties agree that Settling Defendant

1 need not file an answer to the complaint in this action unless or until the court expressly declines  
2 to enter this Consent Decree.

3 **XXXIV. RELATIONSHIP BETWEEN CONSENT ORDER AND CONSENT DECREE**

4 116. The United States and the Settling Defendant have agreed that certain portions of the  
5 Work shall commence in accordance with Settlement Agreement and Administrative Order on  
6 Consent for Remedial Design, EPA Docket No. \_\_\_\_\_, (“Settlement Agreement”) prior to  
7 the Effective Date. Upon the Effective Date, and as set forth in Section III of the Settlement  
8 Agreement, the Settlement Agreement shall terminate. It is agreed by the Parties, that upon  
9 termination of the Settlement Agreement due to entry of this Consent Decree, performance of  
10 work commenced under the Settlement Agreement shall continue under this Consent Decree in  
11 accordance with the EPA-approved schedules and requirements developed under the Settlement  
12 Agreement. To the extent that Settling Defendant has fulfilled obligations under the Settlement  
13 Agreement that are also required by this Consent Decree, Settling Defendant shall also be deemed  
14 to have fulfilled such obligations under this Consent Decree.

15 **XXV. FINAL JUDGMENT**

16 117. This Consent Decree and its appendices constitute the final, complete, and exclusive  
17 agreement and understanding among the parties with respect to the settlement embodied in the  
18 Consent Decree. The Parties acknowledge that there are no representations, agreements, or  
19 understandings relating to the settlement other than those expressly contained in this Consent  
20 Decree. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall  
21 constitute a final judgment between and among the United States and the Settling Defendant. The  
22 Court finds that there is no just reason for delay and therefore enters this judgment as a final  
23 judgment under Fed. R. Civ. P. 54 and 58.

1 **SO ORDERED**, this \_\_\_\_\_ Day of \_\_\_\_\_, 2007.

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UNITED STATES DISTRICT JUDGE

1 **THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States**  
2 **v. Frazer Exton Development, LP, relating to the Foote Mineral Superfund Site.**

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6  
7 **FOR THE UNITED STATES OF AMERICA:**

8  
9  
10 \_\_\_\_\_  
11 *M. J. Mckeown*

12  
13  
14 \_\_\_\_\_  
15 MATTHEW J. MCKEOWN  
16 Acting Assistant Attorney General  
17 U.S. Department of Justice  
18 Environment & Natural Resources  
19 Division

20  
21  
22 BRUCE GELBER  
23 Section Chief  
24 Environmental Enforcement Section

25  
26  
27  
28  
29 \_\_\_\_\_  
30 ROBERT E. LEFEVRE  
31 Attorney  
32 Environmental Enforcement Section  
33 P.O. Box 7611  
34 Ben Franklin Station  
35 Washington, D.C. 20044  
36 (202) 616-8860  
37 Robert.Lefevre@usdoj.gov

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PATRICK L. MEEHAN  
United States Attorney  
Eastern District of Pennsylvania

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Assistant United States Attorney  
Eastern District of Pennsylvania  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106  
(215) 861-



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Assistant Administrator for  
Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

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Regional Administrator, Region III  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103

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Regional Counsel  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103

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Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103

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**FOR FRAZER EXTON DEVELOPMENT, L.P.**

\_\_\_\_\_  
*[Signature]*

*Please Type the Following:*

Name: Daniel M. Sevick

Title: President, Frazer Exton Development, L.P.

Address: Roskamp Management Co., L.L.C.

855 Springdale Drive, Suite 110

Exton, PA 19341

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

*Please Type the Following:*

Title: President, Frazer Exton Development, L.P.

Address: Roskamp Management Co., L.L.C.

855 Springdale Drive, Suite 110

Exton, PA 19341

Telephone: 484-875-0475