

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

United States of America,)
)
)
 Plaintiff,)
)
)
 v.) CIVIL ACTION NO.
)
)
 Groveland Resources Corporation, and)
 Valley Manufactured Products Company, Inc.,)
)
)
 Defendants.)

CONSENT DECREE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606 and 9607, as amended ("CERCLA"), seeking injunctive relief and reimbursement of response costs incurred for response actions taken in connection with the release or threatened release of hazardous substances at the Groveland Wells Nos. 1 & 2 Superfund Site ("Site") located in Groveland, Massachusetts.

B. A portion of the Site is owned by Groveland Resources Corporation and this property is located at 64 Washington Street, Groveland, Massachusetts ("the Property"). The Property is the former site of a manufacturing facility which used trichloroethene ("TCE") in its operations.

C. On November 15, 2001, EPA recorded a lien on the Property pursuant to Section 107(l) of CERCLA, 42 U.S.C. §9607(l) to secure payment to the United States of all costs and damages for which Groveland Resources Corporation is liable under Section 107(a) of CERCLA, 42 U.S.C. §9607(a) ("Superfund Lien").

D. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

E. The United States has reviewed the Financial Information submitted by the Settling Defendants to determine whether Settling Defendants are financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States has determined that Settling Defendants are only able to pay the amounts specified in Section VI (Payment of Response Costs).

F. In this case, liability insurance policies including but not limited to comprehensive, primary, umbrella, and excess policies (collectively "Insurance Policies") may have been or were issued to or for the benefit of the Settling Defendants, or any predecessor in interest to the Settling Defendants, including but not limited to policies for which the Settling Defendants or any predecessor is an "insured," "named insured," or "additional insured," which Insurance Policies, if located, may provide coverage for all or part of the claims alleged by the complaint filed in this action by the United States against the Settling Defendants.

G. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

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

IV. DEFINITIONS

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

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

“Consent Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

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

“DOJ” shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

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

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Fair Market Rate” shall mean the price at which the Property would be leased between a willing lessee and a willing lessor under actual market conditions, neither being under any compulsion to lease and both having reasonable knowledge of relevant facts, and considering the current and future condition of the Property as would be done in any fair market transaction.

“Fair Market Value” shall, except in the event of a foreclosure or transfer by deed or other assignment in lieu of foreclosure, mean the price at which the Property would change hands between a willing buyer and a willing seller under actual market conditions, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts, and considering the current and future condition of the Property as would be done in any fair market transaction. In the event of a transfer by foreclosure, “Fair Market Value” shall mean the amount obtained at the foreclosure sale. In the event of a transfer by a deed or other assignment in lieu of foreclosure, “Fair Market Value” shall mean the balance of Settling Defendants’ mortgage on the Property at the time of the transfer.

“Financial Information” shall mean those financial documents identified in Appendix A.

“Groveland Wells Superfund Site Special Account” shall mean the special account established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. §9622(b)(3).

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

“Lease Agreement” shall mean any agreement or arrangement related to the lease, rental, or use of the Property for any purposes in exchange for money or in-kind service. Any Lease Agreement shall include a contractual obligation by the Lessee to comply with any access and/or land use restrictions imposed on the Property pursuant to law, regulation, easement, or this Consent Decree.

“Net Lease Proceeds” shall mean the total annual value of all consideration received by Settling Defendants for the Lease of the Property (or if the consideration cannot be determined, or is less than the Fair Market Value, the Fair Market Value of Leasing the Property) less (i) federal, state, and municipal taxes owed on the proceeds, except as otherwise agreed by EPA, and (ii) the reasonable costs necessary for the repair and maintenance of the Property customary for a landlord to pay under lease agreements for similar industrial property. Settling Defendants shall provide EPA with documentation sufficient to show the total value of all consideration received by Settling Defendants for the Lease (or if the consideration cannot be determined, the Fair Market Value of the Lease) at the time of the Lease, the amount of the

proceeds of the Lease, and the amounts corresponding to items (i) and (ii) above.

“Net Sales Proceeds” shall mean the total value of all consideration for each Transfer (or if the consideration cannot be determined, the Fair Market Value of the Property) less (i) the balance of Settling Defendants’ mortgage on the Property, if payment is made at the time of closing to the holder of the mortgage, (ii) closing costs limited to those reasonably incurred and actually paid by Settling Defendants associated with the Transfer of the Property (including auction costs, if any); (iii) federal, state, and municipal taxes owed on the proceeds or the Property, except as otherwise agreed by EPA; and (iv) payment and satisfaction of any liens, if any, with priority over the Superfund Lien on the Property. Settling Defendants shall provide EPA with documentation sufficient to show the total value of all consideration received by Settling Defendants for each Transfer (or if the consideration cannot be determined, the Fair Market Value of the Property) at the time of each Transfer, the amount of the proceeds of the Transfer, and the amounts corresponding to items (i) through (iv) above, if any. This documentation shall include, but not be limited to, the report of an appraisal paid for by Settling Defendants, performed by an appraiser satisfactory to the Parties, upon appraisal assumptions satisfactory to the Parties, including, but not limited to, consideration, at the time of the appraisal, of the Property in its existing condition, EPA’s plans for addressing any hazardous substances at the Property, and any restrictions on the use of the Property. The documentation shall also include, either as part of the report or separately, 1) a tax statement showing the assessed valuation of the Property for each of the three years immediately preceding the Transfer, and 2) a schedule showing all outstanding indebtedness on the Property.

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

“Parties” shall mean the United States and the Settling Defendants.

“Plaintiff” shall mean the United States.

“Property” shall mean that portion of the Site that is owned by Groveland Resources Corporation. In general, the Property is located at 64 Washington Street, Groveland, Massachusetts and is more particularly described in Appendix B.

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

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

“Settling Defendants” shall mean Groveland Resources Corporation and Valley Manufactured Products Company, Inc.

“Site” shall mean the Groveland Wells Nos. I & II Superfund Site in Groveland,

Massachusetts.

“Transfer” shall mean each sale, assignment, transfer or exchange by any Settling Defendant (or its successors) of the Property, or any portion thereof, or of an entity owning the Property, where title to the Property (or any portion or interest thereof) or to the entity owning the Property (i) is transferred and Fair Market Value is received in consideration, ii) is transferred involuntarily by operation of law, including foreclosure and its equivalents following default on the indebtedness secured, in whole or in part, by the Property, including, but not limited to, a deed or other assignment in lieu of foreclosure; or (iii) is transferred with the advance written consent of EPA. Such consent may be withheld in the sole and unreviewable discretion of EPA.

“United States” shall mean the United States of America, including its departments, agencies and instrumentalities.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objectives of the Parties are: for the Settling Defendants to make cash payment(s); to comply with the Institutional Control provisions of this Consent Decree; and to assign their rights to claims proceeds from Insurance Policies to the United States to address their liability for the Site as provided in the Covenant Not to Sue by Plaintiff in Section IX, and subject to the Reservations of Rights by United States in Section X.

VI. PAYMENT OF RESPONSE COSTS AND ASSIGNMENT OF INSURANCE CLAIMS

5. Payment of Proceeds of Sale and/or Lease of Property. Settling Defendants agree that they will not sell, assign, transfer or exchange the Property except by means of a Transfer, and that they will not lease or otherwise rent the Property except by means of a Lease Agreement. Settling Defendants shall use their best efforts to market the Property for sale and/or lease beginning at the time of entry of this Consent Decree. For purposes of this Paragraph, “best efforts to market the Property for sale and/or lease” shall include, but shall not be limited to: (1) listing the Property, within 30 days of entry of this Consent Decree, for sale and/or lease with a broker, dealer or agent who usually deals with the type of property in question; (2) responding to the reasonable inquiries of prospective buyers and/or lessees; (3) maintaining the Property in a condition suitable for exhibition to prospective buyers and/or lessees for a building that is currently vacant and unused; and (4) allowing the Property to be shown at all reasonable times. Settling Defendants shall continue to market the Property for sale and/or lease after the termination of any Lease Agreement.

a. Payments for Sale of the Property

i. Settling Defendants shall pay to EPA 100% of the Net Sales Proceeds of the

Transfer of the Property. Payment shall be made to EPA at closing of the Transfer of the Property, unless EPA agrees to another arrangement in writing.

ii. Payment shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying each check, shall identify the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 0132, and Civil Action No. _____, and shall be sent to:

EPA Superfund
EPA Region I.
P. O. Box 360197M
Pittsburgh, PA 15251

iii. At the time of payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XVI (Notices and Submissions).

iv. At least 30 days prior to any such Transfer, Settling Defendants shall notify EPA of the proposed transfer, which notice shall include a description of the property to be sold, the identity of the purchaser, the terms of the transfer, the consideration to be paid, and a copy of the Transfer agreement. The proposed sales price must be at least equal to the Fair Market Value of the Property based upon an appraisal obtained within 1 year of the Transfer, unless EPA otherwise agrees in writing. Settling Defendants shall notify EPA of the completion of the Transfer within 10 days of the date of closing and shall include with such notification a copy of the closing binder, including final executed documentation for the conveyance and a work sheet setting forth the Net Sales Proceeds and the amount payable to EPA.

v. In the event of a Transfer of the Property or any portion thereof, Settling Defendants shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Consent Decree, except if EPA and Settling Defendants modify this Consent Decree in writing.

vi. Any contract of sale shall state that the sale is conditioned upon EPA's approval of the sale. If Institutional Controls have not already been recorded on the Property consistent with all the requirements of Section XIII of this Consent Decree, the Settling Defendant shall require, that as a condition of Transfer of the Property, the buyer of the Property shall assume all obligations with respect to Access and Institutional Controls as set forth in Section XIII of this Consent Decree, including, but not limited to, the obligation to comply any Institutional Controls, as required pursuant to Section XIII. At least 30 days prior to any Transfer of Property, Settling Defendants shall notify EPA of the proposed Transfer, which notice shall include a description of the Property to be sold, the identity of the purchaser, the terms of the Transfer, the consideration to be paid, a copy of the Transfer agreement, and the expected amount of the Net Sales Proceeds at the time of the closing. EPA may approve of the sale if it determines that Settling Defendants have properly calculated the amount of the Net Sales Proceeds and if EPA determines, in its sole discretion, that the sale is in the public interest

and otherwise consistent with EPA policy, including EPA's policies regarding windfall liens. A copy of an appraisal, if requested by the EPA, obtained within 1 year of the proposed Transfer shall also be provided. The sales price may be less than, equal to, or greater than the appraised value, depending on changes in market conditions.

vii. At the time of the closing of the transaction for the Transfer, Settling Defendants shall direct the closing agent to pay to the EPA the Net Sales Proceeds as set forth in Paragraph 5.

b. Payments for Lease of the Property

i. Settling Defendants shall pay to EPA 100% of the Net Lease Proceeds. Payment(s) shall be made to EPA directly pursuant to the terms of the Lease Agreement, on a monthly basis, unless EPA agrees to another arrangement in writing.

ii. Payment shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying each check, shall identify the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 0132, and Civil Action No. _____, and shall be sent to:

EPA Superfund
EPA Region I
P. O. Box 360197M
Pittsburgh, PA 15251

iii. At the time of each payment, the Lessee shall send notice that payment has been made to EPA and DOJ in accordance with Section XVI (Notices and Submissions).

iv. At least 30 days prior to any Lease Agreement, Settling Defendants shall notify EPA of the proposed Lease Agreement, which notice shall include a description of the property to be leased, the identity of the Lessee, the terms of the Lease, the consideration to be paid, and a copy of the Lease Agreement. The proposed lease price must be at least equal to the Fair Market Rate for the Property based upon an appraisal obtained within one year prior to the execution of the Lease Agreement, unless EPA otherwise agrees in writing. Settling Defendants shall notify EPA of the execution of the Lease Agreement within 10 days of the date of closing and shall include with such notification a copy of the Lease Agreement, including a work sheet setting forth the Net Lease Proceeds and the amount payable to EPA on a monthly basis (1/12th of the Net Lease Proceeds).

v. In the event of a Lease of the Property, or any portion thereof, Settling Defendants shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Consent Decree, except if EPA and Settling Defendants modify this Consent Decree in writing.

vi. Any Lease Agreement shall state that the Lease is conditioned upon EPA's approval of the Agreement. The Settling Defendant shall require, that as a condition of any Lease Agreement, that the lessee of the Property shall comply with all obligations with respect to Access and Institutional Controls as set forth in Section XIII of this Consent Decree, excluding the obligation to record any Institutional Controls, as required pursuant to Section XIII. A prorated portion of the Net Lease Proceeds (1/12th of the Net Lease Proceeds) shall be paid on the first business day of every month, unless EPA agrees to a different arrangement in writing. Within two days of entering into a contract for a Lease Agreement, Settling Defendants shall provide EPA with a copy of the Lease Agreement and a written notice to EPA indicating the identity of the Lessee, and the expected amount of the Net Lease Proceeds at the time of the closing.

c. The total amount to be paid by Settling Defendants pursuant to Subparagraph 5.a and 5.b. shall be deposited in the Groveland Wells Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

6. a. Upon the Date of Entry of this Consent Decree, Settling Defendants shall be deemed to have irrevocably assigned to the United States all rights and potential rights to claims proceeds under any Insurance Policies, including but not limited to all claims proceeds under any Insurance Policies applicable to the United States' claims regarding the Site and with regard to all expenditures to date by the Settling Defendants relating to the Site. The Settling Defendants further agree to execute a written valid assignment to allow the pursuit and collection by the United States of any claims proceeds under the Insurance Policies. By agreeing to this provision, the Settling Defendants are not representing that any such Insurance Policies currently exist for the Property, or that the Property would qualify for insurance coverage.

b. The Settling Defendants further agree to diligently present all claims that may arise under the Insurance Policies, including but not limited to claims for coverage of the United States' claims with respect to the Site, and to cooperate in addressing and responding to appropriate inquiries by insurers or others with regard to such claims or the Insurance Policies.

7. [intentionally left blank]

8. Other Matters: No new mortgage, easement, restriction or encumbrance may be placed on the Property by Settling Defendants without the approval of the United States.

9. Within 30 days of signing this Agreement, Settling Defendants shall file in the land records office of the appropriate county for the Property a consent judgment lien, in the form attached hereto as Appendix C, indicating that a consent judgment has been entered in this action requiring Settling Defendants to pay the amount set forth in Section VI (Payment of Response Costs) of this Agreement from Net Sales Proceeds from the Transfer of Property, and placing a

consent judgment lien on the Property in the amount of this payment obligation. Copies of the recorded liens shall be provided to EPA within 60 days of signing this Agreement.

10. Upon satisfaction of the Agreement obligations and at the request of Settling Defendants, the United States shall act within a reasonable time to remove any record liens or attachments, which it has placed on the Property.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

11. Interest on Late Payments. If Settling Defendants fail to make any payment under Paragraph 5 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

12. Stipulated Penalty.

a. If any amounts due under Paragraph 5 are not paid by the required date, or if Settling Defendants otherwise fail to comply with the terms of this Consent Decree, Settling Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 11, \$500 per violation per day, except as follows: Notwithstanding the foregoing, if Settling Defendants do not comply with notice obligations in Section VI (Payment of Response Costs), Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, \$100 per violation per day of such noncompliance.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as “stipulated penalties” and shall be made by certified or cashier’s check made payable to “EPA Hazardous Substance Superfund.” The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number 0132, and Civil Action No. _____, and shall be sent to:

EPA Superfund
EPA Region I
P. O. Box 360197M
Pittsburgh, PA 15251

c. At the time of each payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XVI (Notices and Submissions).

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance or the day a violation occurs, and shall continue to accrue through the date of

payment or the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

13. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

14. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

15. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

VIII. RELEASE OF NOTICE OF FEDERAL LIEN

16. Within 60 days after EPA receives all of the payments required by Paragraph 5.a. of this Consent Decree for Transfer of all the Property, and upon request by the Settling Defendants, EPA shall file a Release of the Consent Judgement Lien and the Superfund Lien in the Registry of Deeds, Essex County, Massachusetts.

IX. COVENANT NOT TO SUE BY PLAINTIFF

17. Except as specifically provided in Section X (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by EPA of all amounts required by Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree including but not limited to cooperation in addressing inquiries by insurers, and execution of all necessary agreements to allow the pursuit, and collection by the United States or its designee, of insurance claims proceeds. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Defendants. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Defendants shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 24 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Settling Defendants' false or materially inaccurate

information. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

X. RESERVATION OF RIGHTS BY UNITED STATES

18. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 17. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based upon Settling Defendants' ownership or operation of the Site, or upon Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendants; and
- e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

19. Notwithstanding any other provision of this Consent Decree, EPA reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by Settling Defendants, or the financial certification made by Settling Defendants in Paragraph 33, is false or, in an material respect, inaccurate.

XI. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

20. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

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

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

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 22 (Waiver of Claims) and Paragraph 26 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 18 (c) - (e), but only to the extent that Settling Defendants' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

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

22. Settling Defendants agree not to assert any CERCLA claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendants may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendants.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

23. Except as provided in Paragraph 22, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law.

24. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The "matters addressed" in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights within the scope of such reservations against Settling Defendants.

25. Settling Defendants agree that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in

writing within 10 days of service of the complaint or claim upon it. In addition, Settling Defendants shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

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

VIII. ACCESS AND INSTITUTIONAL CONTROLS

27. If the Site, or any other property where access and/or land/water use restrictions are needed to implement response activities at the Site, is owned or controlled by any Settling Defendant(s), Settling Defendant(s) shall:

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

1. Monitoring, inspecting, surveying, investigation, removal, remedial or other activities at the Site;
2. Verifying any data or information submitted to the United States;
3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples, including but not limited to the sampling of soil, soil beneath any buildings, groundwater, sludges, sediment, debris, and air monitoring;
5. Assessing the need for, planning, or implementing additional response actions at or near the Site;
6. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or its agents, consistent with Section XIV Access to Information;
7. Assessing Settling Defendants' compliance with this Consent Decree;

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

9. Surveying plant building structures and property for the purpose of determining the most appropriate locations to collect samples, relating sample locations to base map, and determining all necessary components from partial building demolition;

10. Maintaining site security during site activities including any repair of any existing security structures such as perimeter fence;

11. Mobilizing (and demobilizing) the necessary equipment, supplies, and structures to conduct site investigations including but not limited to, the construction of: access roads or ramps, material transfer stations, stockpiling areas, decontamination areas, equipment sheds or trailers, storage tanks, and worker sanitary facilities;

12. Staging construction trailers on the Site;

13. Demolishing and disposing off-site existing on-site structures, with no obligation to rebuild, other than to render any remaining structure(s) (if any) safe and usable upon completion of the response activities;

14. Removing and disposing off-site underground storage tanks;

15. Configuring surface water runoff collection points to ensure that runoff leaves the site consistent with best management practices; and

16. Operating and maintaining the groundwater extraction, treatment and discharge system.

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity or protectiveness of the response measures taken, being implemented, or to be performed at the Site. Such restrictions include, but are not limited to: (1) residential, agricultural or other uses of the Site that may present an unacceptable risk to human health shall be prohibited; (2) extraction of groundwater at the Site for consumption or any other purpose, except groundwater monitoring, shall be prohibited; (3) excavation at the Site shall be prohibited; (4) use of existing structures, and construction of any new structures at the Site shall be prohibited, unless a study is conducted to determine if vapor intrusion screening criteria are met and, as appropriate, unless such use and construction is designed to prevent vapor intrusion; and (5) any activities that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial action shall be prohibited.

c. execute and record in the Registry of Deeds of Essex County, Massachusetts, an easement, running with the land, that (i) grants a right of access for the purpose of conducting

response activities at the Site, and (ii) grants the right to enforce the land/water use restrictions set forth in Paragraph 27(b) of this Consent Decree, or other restrictions within 60 days of a request by EPA that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the response measures to be performed at the Site. Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to the EPA, the Commonwealth, and their representatives.

Settling Defendants shall, within 45 days of receipt of any written request from EPA, submit to EPA for review and approval with respect to such property:

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

2. current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

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

d. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement response activities at the Site, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA's efforts to secure such governmental controls.

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

XIV. ACCESS TO INFORMATION

28. Settling Defendants shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

29. Confidential Business Information and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Defendants that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such records without further notice to Settling Defendants.

b. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing records, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

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

XV. RETENTION OF RECORDS

31. a. Until 10 years after the entry of this Consent Decree, Settling Defendants shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

b. After the conclusion of the document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records to EPA. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

32. a. The Settling Defendants agree to irrevocably assign to EPA all potential rights to insurance claims proceeds under the Insurance Policies, including but not limited to all proceeds under the Insurance Policies with respect to the United States' claims with respect to the Site and with regard to all expenditures to-date by the Settling Defendants relating to the Site. The Settling Defendants further agree to execute all necessary documentation to effectuate this assignment and to allow the pursuit and collection by EPA or its designee of any insurance claims proceeds under the Insurance Policies. By agreeing to this provision, Settling Defendants are not representing that any such Insurance Policies currently exist for the Property, or that the Property would qualify for insurance coverage.

b. The Settling Defendants further agree to diligently present all claims that may arise under the Insurance Policies, including for coverage of the United States' claims with respect to the Site, and to cooperate in addressing and responding to appropriate inquiries by insurers with regarding to such claims or the Insurance Policies.

33. Settling Defendants hereby certify that, to the best of their knowledge and belief, after thorough inquiry, they have:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or other information relating to their potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against them regarding the Site, and that it has fully complied with any and all EPA requests for information regarding the Site and Settling Defendants' financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927; and

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth their financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Defendants execute this Consent Decree.

XVI. NOTICES AND SUBMISSIONS

34. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendants, respectively.

As to the United States:

As to DOJ:

Catherine Adams Fiske
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
One Gateway Center –Suite 616
Newton, MA 02458

As to EPA:

Steven Schlang
U.S. Environmental Protection Agency, Region I
Office of Environmental Stewardship
One Congress Street, Suite 1100,
Mail Code SES
Boston, Massachusetts 02114

As to Settling Defendants:

Julie Pruitt Barry
Nutter, McClennen & Fish, LLP
World Trade Center West
155 Seaport Blvd.
Boston, MA 02210
Ph. (617) 439-2831
Fax (617) 310-9831

XVII. RETENTION OF JURISDICTION

35. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVIII. INTEGRATION/APPENDICES

36. This Consent Decree and its appendices constitute the final, complete and exclusive Consent Decree and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

Appendix A: Financial Information;
Appendix B: Description of Site Property owned by Settling Defendants; and
Appendix C: Consent Judgment Lien.

XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

37. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

38. a. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

b. Non-material modifications to the Consent Decree may be made only by written notification to and written approval of the United States, and the Settling Defendants. Such modifications will become effective upon filing with the Court by the United States. Modifications to the process for obtaining, or to the form of, Institutional Controls shall be deemed non-material modifications to the Consent Decree. Material modifications to the Consent Decree may be made only by written notification to and written approval of the United States, Settling Defendant and the Court. Nothing in this Decree shall be deemed to alter the Court's power to enforce this Consent Decree.

XX. SIGNATORIES/SERVICE

39. Each undersigned representative of Settling Defendants to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

40. Settling Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

41. Settling Defendants shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XXI. FINAL JUDGMENT

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

SO ORDERED THIS ____ DAY OF _____, 2__.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Groveland Resources Corporation, et. al., Civil Action Number No. _____, relating to the Groveland Wells I & II Superfund Site.

FOR THE UNITED STATES OF AMERICA

Ronald J. Tenpas
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
Washington, D.C. 20530

Date: 11/7/07

Catherine Adams Fiske
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
One Gateway Center – Suite 616
Newton, MA 02458

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Groveland Resources Corporation, et. al., Civil Action Number No. _____, relating to the Groveland Wells I & II Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 9-27-07

Robert W. Varney
Regional Administrator
Region I
U.S. Environmental Protection Agency
One Congress Street
Suite 1100
Boston, MA 02114-2023

Date: 9/27/07

Steven Schlang
Senior Enforcement Counsel
Region I
U.S. Environmental Protection Agency
One Congress Street
Suite 1100
Boston, MA 02114-2023

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Groveland Resources Corporation, et. al., Civil Action Number No. _____, relating to the Groveland Wells I & II Superfund Site.

FOR DEFENDANT: Groveland Resources Corporation

Date: 14 September 2007

Name: Donald A. Millard, Jr.

Title: Vice President

Address: To Julie Pruitt Barry, Esquire
Nutter McClennen & Fish

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

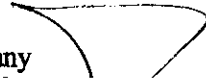
Name: JULIE PRUITT BARRY

Title: ATTORNEY

Address: NUTTER, MCCLENNEN & FISH, LLP
155 SEAPORT BLVD.
WTCW
BOSTON MA 02210

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Groveland Resources Corporation, et. al., Civil Action Number No. _____, relating to the Groveland Wells I & II Superfund Site.

FOR DEFENDANT: Valley Manufactured Products Company



Date: 14 September 2007

Name: Donald B. Millard, Jr.

Title: Vice President

Address: To Julie Pruitt Barry, Esquire
Nutter, Mc Clellenn & Fish

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

Name: JULIE PRUITT BARRY

Title: ATTORNEY

Address: NUTTER, M'CLENNEN & FISH, LLP
WTW
155 BEAUFORT BLVD.
BOSTON, MA 02210