

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA
and COMMONWEALTH OF
MASSACHUSETTS,

Plaintiffs,

v.

AMERICAN BILTRITE INC.,
NOR-AM AGRO LLC,
OLIN CORPORATION, and
STEPAN COMPANY,

Defendants.

Civil Action No. _____

CONSENT DECREE

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WHEREAS, 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 under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”).

WHEREAS, the United States in its complaint seeks, *inter alia*: (1) reimbursement of costs incurred by EPA and the Department of Justice (“DOJ”) for response actions at the Olin Chemical Superfund Site in Wilmington, Massachusetts (“Site”), together with accrued interest; and (2) performance by the defendants of a response action at the Site consistent with the National Contingency Plan, 40 C.F.R. part 300 (“NCP”).

WHEREAS, in accordance with the NCP and section 121(f)(1)(F) of CERCLA, EPA notified the Commonwealth of Massachusetts (“Commonwealth”) on June 22, 2021, of negotiations with potentially responsible parties (“PRPs”) regarding the implementation of the remedial design and remedial action (“RD/RA”) for the Site, and EPA has provided the Commonwealth with an opportunity to participate in such negotiations and to be a party to this Consent Decree (“Decree”).

WHEREAS, in the same complaint, the Commonwealth, on behalf of the Massachusetts Department of Environmental Protection (“MassDEP”) has alleged that the defendants are liable to the Commonwealth under section 107 of CERCLA, and the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Mass. Gen. Laws ch. 21E, §§ 1-22 (“Chapter 21E”), for: (1) reimbursement of costs incurred or to be incurred by the Commonwealth for response actions at the Site, together with accrued interest; and (2) performance by the defendants of response actions at the Site.

WHEREAS, in accordance with section 122(j)(1) of CERCLA, EPA notified the U.S. Department of Interior, U.S. Department of Commerce National Oceanic and Atmospheric Administration, and U.S. Fish and Wildlife Service on June 16, 2021, of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the federal trustees to participate in the negotiation of this Decree. On June 22, 2021, EPA notified the Massachusetts Secretary of Energy and Environmental Affairs of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under state trusteeship and encouraged the Secretary as state trustee to participate in the negotiation of this Decree.

WHEREAS, the defendants that have entered into this Decree (“Settling Defendants”) do not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

WHEREAS, pursuant to Chapter 21E and the Massachusetts Contingency Plan, 310 C.M.R. §§ 40.0000, *et seq.* (“the MCP”), on September 15, 1995, MassDEP assigned a Release Tracking Number (RTN 3-0000471) to releases of oil and/or hazardous materials occurring at,

from or onto the Site and all places where such oil and/or hazardous materials have come to be located as a disposal site under Chapter 21E and the MCP.

WHEREAS, in accordance with section 105 of CERCLA, EPA listed the Site on the National Priorities List (“NPL”), set forth at 40 C.F.R. part 300, Appendix B, by publication in the Federal Register on April 19, 2006, 71 Fed. Reg. 20016.

WHEREAS, following the Site’s placement on the NPL, MassDEP has been acting as support agency under CERCLA and the NCP.

WHEREAS, the RD/RA addressed by this Consent Decree is for a final action for Operable Unit 1 (“OU1”) and Operable Unit 2 (“OU2”) and an interim action for Operable Unit 3 (“OU3”). OU1 includes soil, sediments, and surface water on the Olin Corporation Property (“Property”). OU2 includes off-Property soil, sediments, and surface water. OU3 includes all on- and off-Property groundwater areas that have been affected by contamination from the Property.

WHEREAS, in response to a release or a substantial threat of a release of hazardous substances at or from the Site, certain of the Settling Defendants commenced on July 3, 2007, a Remedial Investigation and Feasibility Study (“RI/FS”) for the Site in accordance with 40 C.F.R. § 300.430 and in accordance with the Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study (CERCLA Docket No. 01-2007-0102), entered on June 28, 2007 and made effective as of July 3, 2007 (“RI/FS AOC”).

WHEREAS, these certain Settling Defendants completed a Remedial Investigation (“RI”) Report for OU1 and OU2 on July 24, 2015 and a draft RI Report for OU3 in June 2019. EPA supplemented these reports with RI addenda and additional risk evaluations. Based on the findings presented in these RI reports, EPA determined that sufficient information was available to evaluate alternatives to address soil, sediment, and surface water contamination in OU1 and OU2 and to evaluate alternatives to initiate source control actions for groundwater (OU3). However, data gaps remain regarding the full extent of contamination in groundwater at the Site. A Feasibility Study (“FS”) Report composed of three volumes was prepared for the Site. Two of the volumes were completed by certain Settling Defendants and the third was completed by EPA. The FS Report provides the basis for the selected final remedy for OU1/OU2 to mitigate risks from soil, sediments, and surface water and an interim remedy for OU3 to initiate source control for groundwater. Additional investigation activities are still ongoing for OU3, and a final remedy will be selected following completion of the OU3 RI/FS.

WHEREAS, in accordance with section 117 of CERCLA and 40 C.F.R § 300.430(f), EPA published notice of the completion of the FS and of the proposed plan for remedial action on August 12, 2020, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting and comments received are available to the public as part of the administrative record upon which the Director, Superfund and Emergency Management Division, EPA Region 1, based the selection of the response action.

WHEREAS, EPA selected a remedial action to be implemented at the Site, which is embodied in a final Record of Decision (“Record of Decision”), executed on March 30, 2021.

The Record of Decision includes a summary of responses to the public comments. Notice of the final plan was published in accordance with section 117(b) of CERCLA.

WHEREAS, based on the information currently available, EPA and the Commonwealth have determined that the Work will be properly and promptly conducted by Settling Defendants if conducted in accordance with this Decree.

WHEREAS, pursuant to section 107(l) of CERCLA, EPA has perfected a notice of federal lien against the Property. Olin Corporation and EPA have entered into and subsequently amended an Agreement for Release and Waiver of Lien (“Lien Release Agreement”) to resolve EPA’s lien on the Property. Paragraph 55 of the RI/FS AOC specifies procedures that must be followed with respect to transfer of interests in the Property. Prior to transfer of the Property, Olin Corporation must comply with applicable terms of paragraph 55 of the RI/FS AOC and the Lien Release Agreement.

WHEREAS, Olin Corporation has entered into a contract with Wilmington Woburn Industrial, LLC (a Massachusetts limited liability company with its principal offices at 133 Pearl Street, Suite 300, Boston, Massachusetts 02110, “WWI”) for WWI to purchase and redevelop the Property.

WHEREAS, Olin Corporation has represented that, in accordance with ¶ 15.b of this Consent Decree, it has notified WWI that EPA has selected a remedy to be implemented at the Site as embodied in the Record of Decision and that the potentially responsible parties intended to enter into a Consent Decree with the United States and the Commonwealth requiring implementation of such remedy.

WHEREAS, WWI has formally requested that EPA and MassDEP consider entering into a prospective purchaser agreement with WWI prior to the Transfer of the Property to WWI for proposed redevelopment as a commercial warehousing facility. WWI’s request is attached as Appendix F. This Consent Decree does not relieve any future owner or operator of the Property from complying with all applicable federal, state and local laws, regulations, approvals and permits. Regardless of whether a sale of the Property occurs, Olin Corporation agrees, along with the other Settling Defendants, to perform the Work for the Site in accordance with the terms of this Consent Decree and associated Statement of Work.

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

NOW, THEREFORE, it is hereby **ORDERED** and **DECREED** as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331, and 1345, 1367, and sections 106, 107 and 113(b) of CERCLA, and personal

jurisdiction over the Parties. Venue lies in this District under section 113(b) of CERCLA and 28 U.S.C. §§ 1391(b), and 1395(a), because the Site is located in this judicial district. This Court retains jurisdiction over the subject matter of this action and over the Parties for the purpose of resolving disputes arising under this Decree, entering orders modifying this Decree, or effectuating or enforcing compliance with this Decree. Settling Defendants may not challenge the terms of this Decree or this Court's jurisdiction to enter and enforce this Decree.

II. PARTIES BOUND

2. This Decree is binding upon the United States and the Commonwealth and upon Settling Defendants and their successors. Unless the United States and the Commonwealth otherwise consent, (a) any change in ownership or corporate or other legal status of any Settling Defendant, including any transfer of assets, or (b) any Transfer of the Site or any portion thereof, does not alter any of Settling Defendants' obligations under this Decree. Settling Defendants' responsibilities under this Decree cannot be assigned except under a modification executed in accordance with ¶ 71.

3. In any action to enforce this Decree, Settling Defendants may not raise as a defense the failure of any of their officers, directors, employees, agents, contractors, subcontractors, or any person representing Settling Defendants to take any action necessary to comply with this Decree. Settling Defendants shall provide notice of this Decree to each person representing Settling Defendants with respect to the Site or the Work. Settling Defendants shall provide notice of this Decree to each contractor performing any Work and shall ensure that notice of the Decree is provided to each subcontractor performing any Work.

III. DEFINITIONS

4. Unless otherwise expressly provided in this Consent Decree, terms used in this Decree that are defined in CERCLA or the regulations promulgated under CERCLA have the meanings assigned to them in CERCLA and the regulations promulgated under CERCLA. With respect to the Commonwealth's claims under Chapter 21E, terms used in this Consent Decree which are defined in Chapter 21E or the MCP shall have the meanings assigned to them in Chapter 21E or the MCP to the extent they are not defined in or otherwise inconsistent with CERCLA or the NCP. Whenever the terms set forth below are used in this Decree, the following definitions apply:

“Attorney General's Office” means the Attorney General's Office for the Commonwealth of Massachusetts.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Chapter 21E” means the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Mass. Gen. Laws ch. 21E, §§ 1-22.

“Consent Decree” or “Decree” means this consent decree, all appendixes attached hereto (listed in Section XVIII), and all deliverables incorporated into the Decree under ¶ 8.6 of the

SOW. If there is a conflict between a provision in Sections I through XXIII and a provision in any appendix or deliverable, the provision in Sections I through XXIII controls.

“Day” or “day” means a calendar day. In computing any period under this Decree, the day of the event that triggers the period is not counted and, where the last day is not a working day, the period runs until the close of business of the next working day. “Working day” means any day other than a Saturday, Sunday, or federal or State holiday.

“DOJ” means the United States Department of Justice.

“Effective Date” means the date upon which the Court’s approval of this Decree is recorded on its docket.

“EPA” means the United States Environmental Protection Agency.

“Fund” means the Hazardous Substance Superfund established under section 9507 of the Internal Revenue Code, 26 I.R.C. § 9507.

“Future Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States: (a) pays between March 30, 2021 and the Effective Date that have not been or will not be recovered by EPA under the RI/FS AOC; and (b) pays after the Effective Date that have not been or will not be recovered by EPA under the RI/FS AOC in implementing, overseeing, or enforcing this Decree, including: (i) in developing, reviewing and approving deliverables generated under this Decree; (ii) in overseeing Settling Defendants’ performance of the Work; (iii) in assisting or taking action to obtain access or use restrictions under ¶ 12; (iv) in securing, implementing, monitoring, maintaining, or enforcing Institutional Controls, including any compensation paid; (v) in taking action under ¶ 22 (Access to Financial Assurance); (vi) in taking response action described in ¶ 54 because of Settling Defendants’ failure to take emergency action under ¶ 6.5 of the SOW; (vii) in implementing a Work Takeover under ¶ 11; (viii) in implementing community involvement activities including the cost of any technical assistance grant provided under section 117(e) of CERCLA; (ix) in enforcing this Decree, including all costs paid under Section XI (Dispute Resolution) and all litigation costs; and (x) in conducting periodic reviews in accordance with section 121(c) of CERCLA. Future Response Costs also includes all Interest accrued after March 30, 2021 on EPA’s unreimbursed costs (including Past Response Costs) under section 107(a) of CERCLA.

“Including” or “including” means “including but not limited to.”

“Institutional Controls” or “ICs” means Proprietary Controls (*i.e.*, easements or covenants running with the land that (i) limit land, water, or other resource use, provide access rights, or both and (ii) are created under common law or statutory law by an instrument that is recorded, or for which notice is recorded, in the appropriate land records office) and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices (including Notices of Activity and Use Limitation) that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure noninterference with, or

ensure the protectiveness of the Remedial Action; (c) provide information intended to modify or guide human behavior at or in connection with the Site; or (d) any combination thereof.

“Interest” means, for payments owed to the United States, interest at the rate specified for interest on investments of the Fund, as provided under section 107(a) of CERCLA, compounded annually on October 1 of each year; and for payments owed to the Commonwealth, interest at the rate set forth in section 13 of Chapter 21E. The applicable rate of interest will be the rate in effect at the time the interest accrues. The rate of interest for payments owed to the United States is subject to change on October 1 of each year. As of the date of lodging of this Decree, rates for payments owed to the United States are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“Lien Release Agreement” means Agreement for Release and Waiver of Lien entered into on August 31, 2015 by Olin Corporation and EPA, and as modified by eleven subsequent amendments. The Lien Release Agreement is attached as Appendix E.

“Massachusetts Contingency Plan” or “MCP” means the regulations promulgated pursuant to Chapter 21E, codified at 310 C.M.R. §§ 40.0000, *et seq.*, and any amendments thereto.

“MassDEP” means the Massachusetts Department of Environmental Protection and any successor departments or agencies of the Commonwealth.

“National Contingency Plan” or “NCP” means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated under section 105 of CERCLA, codified at 40 C.F.R. part 300, and any amendments thereto.

“Notice of Activity and Use Limitation” or “NAUL” means a notice of activity and use limitation as described in the MCP, including 310 C.M.R. §§ 40.0111, 40.1070, and 40.1074, that provides property owners, holders of record property interests, and others with notice of the presence and location of contamination remaining at the property subject to the NAUL, and identifies activities and uses that are consistent or inconsistent with maintaining the remedy at the Site.

“Owner Settling Defendant” means the following Settling Defendant who owns or controls all or a portion of the Site: Olin Corporation.

“Paragraph” or “¶” means a portion of this Decree identified by an Arabic numeral or an upper- or lower-case letter.

“Parties” means the United States, the Commonwealth, and Settling Defendants.

“Past Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States paid in connection with the Site, that have not been or will not be recovered by EPA under the RI/FS AOC, through March 30, 2021, plus all interest on such costs accrued under section 107(a) of CERCLA through such date.

“Performance Standards” means the cleanup levels and other measures of achievement of the remedial action objectives, as set forth in the Record of Decision.

“Plaintiffs” means the United States and the Commonwealth.

“Property” means the approximately 50-acre parcel located at 51 Eames Street in Wilmington, Massachusetts, owned or controlled by Olin Corporation.

“RCRA” means the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k (also known as the Resource Conservation and Recovery Act).

“Record of Decision” means the EPA decision document that memorializes the selection of the remedial action relating to the Site signed on March 30, 2021, by the Director of the Superfund and Emergency Management Division, EPA Region 1, and all attachments thereto. The Record of Decision is attached as Appendix A.

“Remedial Action” means the remedial action selected in the Record of Decision.

“Remedial Design” means those activities to be undertaken by Settling Defendants to develop plans and specifications for implementing the Remedial Action as set forth in the SOW.

“RI/FS AOC” means the Site Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study (CERCLA Docket No. 01-2007-0102), entered on June 28, 2007 and made effective as of July 3, 2007. The RI/FS AOC is attached as Appendix D.

“Scope of the Remedy” means the scope of the remedy set forth in ¶ 1.3 of the SOW.

“Section” means a portion of this Decree identified by a Roman numeral.

“Settling Defendants” means American Biltrite Inc., Nor-Am Agro LLC, Olin Corporation, and Stepan Company. As used in this Decree, this definition means all settling defendants, collectively, and each settling defendant, individually.

“Site” means the Olin Chemical Superfund Site, in Wilmington, Middlesex County, Massachusetts, as depicted generally on the map attached as Appendix C.

“Special Account” means the special account, within the Fund, established for the Site by EPA under section 122(b)(3) of CERCLA and the RI/FS AOC.

“State” or “Commonwealth” means the Commonwealth of Massachusetts.

“State Future Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the Commonwealth: (a) pays on or after January 1, 2022, plus Interest, in implementing, overseeing, or enforcing this Decree, including: (i) in developing reviewing and commenting on deliverables generated under this Decree; (ii) in overseeing Settling Defendants’ performance of the Work; (iii) in assisting or taking action to obtain access or use restrictions under ¶ 12; (iv) in securing, implementing, monitoring,

maintaining, or enforcing Institutional Controls, including any compensation paid; (v) in taking action under ¶ 22 (Access to Financial Assurance); (vi) in taking response action described in ¶ 54 because of Settling Defendants' failure to take emergency action under ¶ 6.5 of the SOW; (vii) in implementing community involvement activities; (viii) in enforcing this Decree, including all costs paid under Section XI (Dispute Resolution) and all litigation costs; and (ix) in reviewing and commenting on periodic reviews conducted in accordance with section 121(c) of CERCLA.

“State Past Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the Commonwealth paid in connection with the Site prior to December 31, 2021, plus Interest through December 31, 2021.

“Statement of Work” or “SOW” means the document attached as Appendix B, which describes the activities Settling Defendants must perform to implement and maintain the effectiveness of the Remedial Action.

“Transfer” means to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” means the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” means (a) any “hazardous substance” under Section 101(14) of CERCLA; (b) any pollutant or contaminant under section 101(33) of CERCLA; (c) any “solid waste” under section 1004(27) of RCRA; (d) any “hazardous material” or “oil” under Chapter 21E; and (e) any “hazardous waste” under Mass. Gen. Laws ch. 21C, § 2.

“Work” means all obligations of Settling Defendants under Sections V (Performance of the Work) through VIII (Indemnification and Insurance).

“Work Takeover” means EPA’s assumption of the performance of any of the Work in accordance with ¶ 11.

IV. OBJECTIVES

5. The objectives of the Parties in entering into this Decree are to protect public health, welfare, and the environment through the design, implementation, and maintenance of a response action at the Site by Settling Defendants, to pay response costs of Plaintiffs, and to resolve and settle the claims of Plaintiffs against Settling Defendants as provided in this Decree.

V. PERFORMANCE OF THE WORK

6. Settling Defendants shall finance, develop, implement, operate, maintain, and monitor the effectiveness of the Remedial Action all in accordance with the SOW, any modified SOW and all EPA-approved, conditionally approved, or modified deliverables as required by the SOW or modified SOW.

7. Nothing in this Decree and no EPA or MassDEP approval of or comment on any deliverable required under this Decree constitutes a warranty or representation by EPA or MassDEP that completion of the Work will achieve the Performance Standards.

8. Settling Defendants' obligations to finance and perform the Work and to pay amounts due under this Decree are joint and several. In the event of the insolvency of any Settling Defendant or the failure by any Settling Defendant to participate in the implementation of the Decree, the remaining Settling Defendants shall complete the Work and make the payments.

9. Modifications to the Remedial Action and Further Response Actions

a. Nothing in this Decree limits EPA's authority to modify the Remedial Action or to select further response actions for the Site in accordance with the requirements of CERCLA and the NCP. Nothing in this Decree limits Settling Defendants' rights, under sections 113(k)(2) or 117 of CERCLA, to comment on any modified or further response actions proposed by EPA.

b. If EPA modifies the Remedial Action in order to achieve or maintain the Performance Standards, or both, or to carry out and maintain the effectiveness of the Remedial Action, and such modification is consistent with the Scope of the Remedy, then Settling Defendants shall implement the modification as provided in ¶ 9.c.

c. Upon receipt of notice from EPA, with a copy to MassDEP, that it has modified the Remedial Action as provided in ¶ 9.b requesting that Settling Defendants implement the modified Remedial Action, Settling Defendants shall implement the modification, subject to their right to initiate dispute resolution under Section XI within 30 days after receipt of EPA's notice. Settling Defendants shall modify the SOW, or related work plans, or both in accordance with the Remedial Action modification or, if Settling Defendants invoke dispute resolution, in accordance with the final resolution of the dispute. The Remedial Action modification, the approved modified SOW, and any related work plans will be deemed to be incorporated into and enforceable under this Decree.

10. **Compliance with Applicable Law.** Nothing in this Decree affects Settling Defendants' obligations to comply with all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the Record of Decision and the SOW. The activities conducted in accordance with this Decree, if approved by EPA, will be deemed to be consistent with the NCP as provided under section 300.700(c)(3)(ii).

11. Work Takeover

a. If EPA determines that Settling Defendants (i) have ceased to perform any of the Work required under this Section; (ii) are seriously or repeatedly deficient or late in performing the Work required under this Section; or (iii) are performing the Work required under this Section in a manner that may cause an endangerment to human health or the environment, EPA may issue, after a reasonable opportunity for review and comment by MassDEP, a notice of

Work Takeover to Settling Defendants, with a copy to MassDEP, including a description of the grounds for the notice and a period of time (“Remedy Period”) within which Settling Defendants must remedy the circumstances giving rise to the notice. The Remedy Period will be 20 days, unless EPA determines in its unreviewable discretion that there may be an endangerment, in which case the Remedy Period will be 10 days.

b. If, by the end of the Remedy Period, Settling Defendants do not remedy to EPA’s satisfaction the circumstances giving rise to the notice of Work Takeover, EPA may notify, after a reasonable opportunity for review and comment by MassDEP, Settling Defendants and, as it deems necessary, commence a Work Takeover.

c. EPA may conduct the Work Takeover during the pendency of any dispute under Section XI but shall terminate, after a reasonable opportunity for review and comment by MassDEP, the Work Takeover if and when: (i) Settling Defendants remedy, to EPA’s satisfaction, the circumstances giving rise to the notice of Work Takeover; or (ii) upon the issuance of a final determination under Section XI (Dispute Resolution) that EPA is required to terminate the Work Takeover.

VI. PROPERTY REQUIREMENTS

12. Agreements Regarding Access and Noninterference

a. As used in this Section, “Affected Property” means any real property, including the Site, where EPA determines, at any time, that access; land, water, or other resource use restrictions; Institutional Controls; or any combination thereof, are needed to implement the Remedial Action.

b. Settling Defendants shall use best efforts to secure from the owner(s), other than the Owner Settling Defendant, of all Affected Property, an agreement, enforceable by Settling Defendants and by Plaintiffs, requiring such owner to provide Plaintiffs and Settling Defendants, and their respective representatives, contractors, and subcontractors with access at all reasonable times to such owner’s property to conduct any activity regarding the Decree, including the following, where applicable (as determined by EPA in consultation with MassDEP):

- (1) implementing the Work and overseeing compliance with the Decree;
- (2) conducting investigations of contamination at or near the Site;
- (3) assessing the need for, planning, or implementing additional response actions at or near the Site;
- (4) determining whether the Site is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Decree; and
- (5) implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls.

c. Further, each agreement required under ¶ 12.b must commit the owner to refrain from using its Affected Property in any manner that EPA determines, after a reasonable opportunity for review and comment by MassDEP, will pose an unacceptable risk to human health or to the environment as a result of exposure to Waste Material, or will interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action, including the following, where applicable (as determined by EPA in consultation with MassDEP):

- (1) engaging in activities that could interfere with the Remedial Action;
- (2) using contaminated groundwater so as to pose an unacceptable risk to human health and the environment, cause further migration of the groundwater contaminant plume, or interfere with the remedy;
- (3) engaging in activities that could result in unacceptable human exposure to contaminants in soils, sediments, surface water, and groundwater;
- (4) constructing new structures that may interfere with the Remedial Action; and
- (5) constructing new structures that may cause an increased risk of inhalation of contaminants.

d. As used in this Section including in ¶ 14, “best efforts” means the efforts that a reasonable person in the position of Settling Defendants would use to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements and Institutional Controls.

e. Settling Defendants shall provide to EPA and MassDEP a copy of each agreement required under ¶ 12.b and each Institutional Control required under ¶ 14. If Settling Defendants cannot accomplish what is required through best efforts in a timely manner, they shall notify EPA, with a copy to MassDEP, and include a description of the steps taken to achieve the requirements. If the United States deems it appropriate, it may assist Settling Defendants, or take independent action, to obtain such access or use restrictions or Institutional Controls.

13. **Access and Noninterference by Owner Settling Defendant.** The Owner Settling Defendant shall: (a) provide Plaintiffs and the Settling Defendants, and their representatives, contractors, and subcontractors with access at all reasonable times to the Site to conduct any activity regarding the Decree, including those listed in ¶ 12.b; and (b) refrain from using the Site in any manner that EPA determines will pose an unacceptable risk to human health or to the environment because of exposure to Waste Material, or will interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action, including the restrictions listed in ¶ 12.c.

14. If EPA determines, after a reasonable opportunity for review and comment by MassDEP, in a decision document prepared in accordance with the NCP that Institutional

Controls are appropriate, Settling Defendants shall cooperate with EPA's and MassDEP's efforts to secure and ensure compliance with Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices (including Notices of Activity and Use Limitations), in accordance with ¶ 5.2 of the SOW (Institutional Controls Implementation and Assurance Plan).

15. Notice to Successors-in-Title

a. Owner Settling Defendant shall, within 15 days after the Effective Date, submit to EPA, with a copy to MassDEP, for EPA approval, after a reasonable opportunity for review and comment by MassDEP, a notice to be recorded regarding its Property at the Site in the appropriate land records. The notice must: (1) include a proper legal description of the Property; (2) provide notice to all successors-in-title: (i) that the Property is part of, or affected by, the Site; (ii) that EPA has selected a remedy for the Site; and (iii) that potentially responsible parties have entered into a Decree requiring implementation of such remedy; and (3) identify the U.S. District Court in which the Decree was filed, the name and civil action number of this case, and the Effective Date of the Decree. Owner Settling Defendant shall record the notice within 10 days after EPA's approval of the notice and submit to EPA, with a copy to MassDEP, within 10 days thereafter, a certified copy of the recorded notice.

b. Owner Settling Defendant shall, prior to entering into a contract to Transfer any of its property that is part of the Site, or 60 days prior to a Transfer of such property, whichever is earlier:

- (1) notify the proposed transferee that EPA has selected a remedy regarding the Site, that potentially responsible parties have entered into a Consent Decree with the United States and the Commonwealth requiring implementation of such remedy, and that the United States District Court has entered the Decree (identifying the name and civil action number of this case and the date the Court entered the Decree); and
- (2) notify EPA and MassDEP of the name and address of the proposed transferee and provide EPA and MassDEP with a copy of the notice that it provided to the proposed transferee.

16. Notwithstanding any provision of the Decree, EPA and MassDEP retain all of their access authorities and rights, as well as all of their rights to require land, water, or other resource use restrictions and Institutional Controls, and to enforce all such land, water, or other resource use restrictions and Institutional Controls, including NAULs, under CERCLA, RCRA, Chapter 21E, the MCP, including 310 C.M.R. § 40.0111(9), and any other applicable statute or regulations.

VII. FINANCIAL ASSURANCE

17. To ensure completion of the Work required under Section V, Settling Defendants shall secure financial assurance, initially in the amount of \$48,214,532.00 ("Estimated Cost of the Work") for the benefit of Plaintiffs and payable to EPA. The financial assurance must: (i) be

one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA; and (ii) be satisfactory to EPA. As of the date of lodging of this Decree, the sample documents can be found under the “Financial Assurance - Settlements” category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>. Settling Defendants may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, insurance policies, or some combination thereof. The following are acceptable mechanisms:

a. a surety bond guaranteeing payment, performance of the Work, or both, that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. an irrevocable letter of credit, payable to EPA or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. a trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. a policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

e. a demonstration by one or more Settling Defendants that they meet the relevant test criteria of ¶ 18, accompanied by a standby funding commitment that requires the affected Settling Defendants to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or

f. a guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of a Settling Defendant or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with a Settling Defendant; and (2) demonstrates to EPA’s satisfaction that it meets the financial test criteria of ¶ 18.

18. Settling Defendants seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 17.e or 17.f must, within 30 days after the Effective Date:

a. demonstrate that:

(1) the affected Settling Defendant or guarantor has:

i. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater

than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

- ii. net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. tangible net worth of at least \$10 million; and
- iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) the affected Settling Defendant or guarantor has:

- i. a current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
- ii. tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. tangible net worth of at least \$10 million; and
- iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. submit to EPA, with a copy to MassDEP, for the affected Settling Defendant or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA. As of the date of lodging of this Decree, a sample letter and report is available under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

19. Settling Defendants providing financial assurance by means of a demonstration or guarantee under ¶ 17.e or 17.f must also:

a. annually resubmit the documents described in ¶ 18.b within 90 days after the close of the affected Settling Defendant's or guarantor's fiscal year;

b. notify EPA within 30 days after the affected Settling Defendant or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Settling Defendant or guarantor in addition to those specified in ¶ 18.b; EPA may make such a request at any time based on a belief that the affected Settling Defendant or guarantor may no longer meet the financial test requirements of this Section.

20. Settling Defendants shall, within 7 days after the Effective Date, seek EPA's approval, after a reasonable opportunity for review and comment by MassDEP, of the form of Settling Defendants' financial assurance. Within 30 days after such approval, Settling Defendants shall secure all executed or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the Regional Financial Management Officer, to DOJ, to EPA, and to MassDEP in accordance with ¶ 69.

21. Settling Defendants shall diligently monitor the adequacy of the financial assurance. If any Settling Defendant becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Settling Defendant shall notify EPA, and provide a copy to MassDEP, of such information within seven days. If EPA determines, after a reasonable opportunity for review and comment by MassDEP, that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Settling Defendant of such determination. Settling Defendants shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA, for approval, with a copy to MassDEP, a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected Settling Defendant, in the exercise of due diligence, to secure and submit to EPA with a copy to MassDEP, a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Settling Defendants shall follow the procedures of ¶ 23 in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Settling Defendants' inability to secure financial assurance in accordance with this Section does not excuse performance of any other requirement of this Decree.

22. Access to Financial Assurance

a. If EPA issues a notice of a Work Takeover under ¶ 11.b, then, in accordance with any applicable financial assurance mechanism including the related standby funding commitment, EPA may require the performance of the Work and/or require that any funds guaranteed be paid in accordance with ¶ 22.d.

b. If EPA is notified that the issuer of a financial assurance mechanism intends to cancel the mechanism, and the affected Settling Defendant fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 22.d.

c. If, upon issuance of a notice of a Work Takeover under ¶ 11.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism including the related standby funding commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under ¶ 17.e or 17.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Settling Defendants shall, within 30 days after such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 22 must be, as directed by EPA, after consultation with MassDEP: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may, after a reasonable opportunity for review and comment by MassDEP, deposit the payment into the Fund or into the Special Account 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 Fund.

23. Modification of Amount, Form, or Terms of Financial Assurance. Once per calendar year beginning after the first anniversary of the Effective Date, or at any other time agreed to by the Settling Defendants and EPA, Settling Defendants may submit a request to change the form, terms, or amount of the financial assurance mechanism. Any such request must be submitted to EPA with a copy to MassDEP, in accordance with ¶ 20, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify, after a reasonable opportunity for review and comment by MassDEP, Settling Defendants of its decision regarding the request. Settling Defendants may initiate dispute resolution under Section XI regarding EPA's decision by the earlier of 30 days after receipt of EPA's decision or 180 days after EPA's receipt of the request. Settling Defendants may modify the form, terms, or amount of the financial assurance mechanism only: (a) in accordance with EPA's approval; or (b) in accordance with any resolution of a dispute under Section XI. Settling Defendants shall submit to EPA, with a copy to MassDEP, within 30 days after receipt of EPA's approval or consistent with the terms of the resolution of the dispute, documentation of the change to the form, terms, or amount of the financial assurance instrument.

24. Release, Cancellation, or Discontinuation of Financial Assurance. Settling Defendants may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Certification of Work Completion under ¶ 6.10 of the SOW; (b) in accordance with EPA's approval, after a reasonable opportunity for review and comment by MassDEP, of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance

with the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XI.

VIII. INDEMNIFICATION AND INSURANCE

25. Indemnification

a. Neither Plaintiff assumes any liability by entering into this Decree or by virtue of any designation of Settling Defendants as EPA's or MassDEP's authorized representative under section 104(e)(1) of CERCLA. Settling Defendants shall indemnify and save and hold harmless each Plaintiff and each of their respective officials, agents, employees, contractors, subcontractors, and representatives for or from any claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Settling Defendants' behalf or under their control, in carrying out activities under this Decree, including any claims arising from any designation of Settling Defendants as EPA's or MassDEP's authorized representatives under section 104(e)(1) of CERCLA. Further, Settling Defendants agree to pay each Plaintiff all costs either may incur including attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against either Plaintiff based on negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control in carrying out activities under this Decree. Neither Plaintiff may be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities under this Decree. The Settling Defendants and any such contractor may not be considered an agent of either Plaintiff.

b. Each Plaintiff shall give Settling Defendants notice of any claim for which it plans to seek indemnification in accordance with this ¶ 25, and shall consult with Settling Defendants prior to settling such claim.

26. Settling Defendants covenant not to sue and shall not assert any claim or cause of action against either Plaintiff for damages or reimbursement or for set-off of any payments made or to be made to either Plaintiff, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work or other activities on or relating to the Site, including claims on account of construction delays. In addition, Settling Defendants shall indemnify and save and hold each Plaintiff harmless with respect to any claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of work at or relating to the Site, including claims on account of construction delays.

27. **Insurance.** Settling Defendants shall secure, by no later than 15 days before commencing any on-site Work, the following insurance: (a) commercial general liability insurance with limits of liability of \$1 million per occurrence; (b) automobile liability insurance with limits of liability of \$1 million per accident; and (c) umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits. The insurance policy must name each Plaintiff as an additional insured with

respect to all liability arising out of the activities performed by or on behalf of Settling Defendants under this Decree. Settling Defendants shall maintain this insurance until the first anniversary after issuance of EPA's Certification of Remedial Action Completion under ¶ 6.8 of the SOW. In addition, for the duration of this Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Decree. Prior to commencement of the Work, Settling Defendants shall provide to EPA, with a copy to MassDEP, certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Settling Defendants shall ensure that all submittals to EPA under this Paragraph identify the Olin Chemical Superfund Site, Wilmington, Massachusetts and the civil action number of this case.

IX. PAYMENTS FOR RESPONSE COSTS

28. **Payment to EPA for Past Response Costs.** Within 30 days after the Effective Date, Settling Defendants shall pay EPA, in reimbursement of Past Response Costs in connection with the Site, \$409,059.66. The Financial Litigation Unit ("FLU") of the United States Attorney's Office for the District of Massachusetts shall provide to Settling Defendants, in accordance with ¶ 69, instructions for making this payment, including a Consolidated Debt Collection System ("CDCS") reference number. Settling Defendants shall make such payment at <https://www.pay.gov> in accordance with the FLU's instructions, including references to the CDCS Number. Settling Defendants shall send notices of this payment to DOJ and EPA in accordance with ¶ 69. If the payment required under this Paragraph is late, Settling Defendants shall pay, in addition to any stipulated penalties owed under Section XII, an additional amount for Interest accrued from the Effective Date until the date of payment.

29. **Payments by Settling Defendants to EPA for Future Response Costs**

a. **Periodic Bills.** On a periodic basis, EPA will send Settling Defendants a bill for Future Response Costs, including a "SCORPIOS Report" or other standard cost summary listing direct and indirect costs paid by EPA, its contractors, subcontractors, and DOJ. Settling Defendants may initiate a dispute under Section XI regarding a Future Response Cost billing, but only if the dispute relates to one or more of the following issues: (i) whether EPA has made an arithmetical error; (ii) whether EPA has included a cost item that is not within the definition of Future Response Costs; or (iii) whether EPA has paid excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Settling Defendants must specify in the Notice of Dispute the contested costs and the basis for the objection.

b. **Payment of Bill.** Settling Defendants shall pay the bill, or if they initiate dispute resolution, the uncontested portion of the bill, if any, within 30 days after receipt of the

bill. Settling Defendants shall pay the contested portion of the bill determined to be owed, if any, within 30 days after the determination regarding the dispute. Each payment for: (i) the uncontested bill or portion of bill, if late; and (ii) the contested portion of the bill determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the bill through the date of payment. Settling Defendants shall make payment at <https://www.pay.gov> using the “EPA Miscellaneous Payments Cincinnati Finance Center” link, and including references to the Site/Spill ID and DJ numbers listed in ¶ 69 and the purpose of the payment. Settling Defendants shall send notices of this payment to DOJ and EPA in accordance with ¶ 69.

30. **Deposit of Payments.** EPA may, in its unreviewable discretion, deposit the amounts paid under ¶¶ 28 and 29.b in the Fund, in the Special Account, or both. EPA may, in its unreviewable discretion, retain and use any amounts deposited in the Special Account to conduct or finance response actions at or in connection with the Site, or transfer those amounts to the Fund.

31. **Payments by Settling Defendants to the Commonwealth for State Future Response Costs**

a. **Periodic Bills.** The Commonwealth will send Settling Defendants a bill requiring payment which includes direct and indirect costs incurred by the Commonwealth and its contractors and subcontractors on a periodic basis, which shall be annually to the extent practicable. Settling Defendants may initiate a dispute under Section XI regarding a State Future Response Cost billing, but only if the dispute relates to one or more of the following issues: (i) whether the Commonwealth has made an arithmetical error; (ii) whether the Commonwealth has included a cost item that is not within the definition of State Future Response Costs; or (iii) whether the Commonwealth has paid excess costs as a direct result of a Commonwealth action that was inconsistent with a specific provision or provisions of the NCP or MCP. Settling Defendants must specify in the Notice of Dispute the contested costs and the basis for the objection.

b. **Payment of Bill.** Settling Defendants shall pay the bill, or if they initiate dispute resolution, the uncontested portion of the bill, if any, within 30 days after receipt of the bill. Settling Defendants shall pay the contested portion of the bill determined to be owed, if any, within 30 days after the determination regarding the dispute. Each payment for: (i) the uncontested bill or portion of bill, if late; and (ii) the contested portion of the bill determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the bill through the date of payment. Settling Defendants shall make all payments by Electronic Funds Transfer (“EFT”) to the Commonwealth of Massachusetts in accordance with current EFT procedures, using the following account information:

Commonwealth of Massachusetts, Department of Environmental Protection
ABA No. 011000138
Account No. 0500201846
Bank of America
75 State Street, Boston, MA 02109
TIN: 04-6002284

Reference Docket No. __[to be inserted at time of payment]__
and shall include the following information: Olin Chemical Superfund Site, RTN
3-0000471.

Any payments received by the Commonwealth after 4:00 P.M. (Eastern Time) will be credited on the next business day. At the time of payment, Settling Defendants shall send notice that such payment has been made to the Commonwealth by electronic mail in accordance with the notice provision of Section XVII of this Consent Decree (Notices and Submission).

X. FORCE MAJEURE

32. “Force majeure,” for purposes of this Decree, means any event arising from causes beyond the control of Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants’ contractors that delays or prevents the performance of any obligation under this Decree despite Settling Defendants’ best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that Settling Defendants exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. “Force majeure” does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

33. If any event occurs for which Settling Defendants will or may claim a force majeure, Settling Defendants shall notify EPA’s Project Coordinator and MassDEP’s Project Coordinator orally and by email. The deadline for the initial notice is one day after the date Settling Defendants first knew or should have known that the event would likely delay performance. Settling Defendants shall be deemed to know of any circumstance of which any contractor of, subcontractor of, or entity controlled by Settling Defendants knew or should have known. Within seven days thereafter, Settling Defendants shall send a further notice to EPA and MassDEP that includes: (i) a description of the event and its effect on Settling Defendants’ completion of the requirements of the Decree; (ii) a description of all actions taken or to be taken to prevent or minimize the adverse effects or delay; (iii) the proposed extension of time for Settling Defendants to complete the requirements of the Decree; (iv) a statement as to whether, in the opinion of Settling Defendants, such event may cause or contribute to an endangerment to public health or welfare, or the environment; and (v) all available proof supporting their claim of force majeure. Failure to comply with the notice requirements herein regarding an event precludes Settling Defendants from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 32 and whether Settling Defendants have exercised their best efforts under ¶ 32, EPA may, in its unreviewable discretion, excuse in writing Settling Defendants’ failure to submit timely or complete notices under this Paragraph.

34. After a reasonable opportunity for review and comment by MassDEP, EPA will notify Settling Defendants of its determination whether Settling Defendants are entitled to relief under ¶ 33, and, if so, the duration of the extension of time for performance of the obligations affected by the force majeure. An extension of the time for performance of the obligations

affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. Settling Defendants may initiate dispute resolution under Section XI regarding EPA's determination within 15 days after receipt of the determination. In any such proceeding, Settling Defendants have the burden of proving that they are entitled to relief under ¶ 33 and that their proposed extension was or will be warranted under the circumstances.

35. The failure by EPA or MassDEP to timely complete any activity under the Decree or the SOW is not a violation of the Decree, provided, however, that if such failure prevents Settling Defendants from timely completing a requirement of the Decree, Settling Defendants may seek relief under this Section.

XI. DISPUTE RESOLUTION

36. Unless otherwise provided in this Decree, Settling Defendants must use the dispute resolution procedures of this Section between EPA and the Settling Defendants or MassDEP and Settling Defendants to resolve any dispute arising under this Decree. Settling Defendants shall not initiate a dispute challenging the Record of Decision. The United States and the Commonwealth may enforce any requirement of the Decree that is not the subject of a pending dispute under this Section.

37. A dispute will be considered to have arisen when Settling Defendants send to Plaintiffs a written notice of dispute ("Notice of Dispute") in accordance with ¶ 69. Disputes arising under this Decree must in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations may not exceed 20 days after the dispute arises, unless the parties to the dispute otherwise agree. If the parties cannot resolve the dispute by informal negotiations, the position advanced by EPA, after a reasonable opportunity for review and comment by MassDEP, is binding unless Settling Defendants initiate formal dispute resolution under ¶ 38. By agreement of the parties, mediation may be used during this informal negotiation period to assist the parties in reaching a voluntary resolution or narrowing of the matters in dispute.

38. Formal Dispute Resolution

a. **Statements of Position.** Settling Defendants may initiate formal dispute resolution by serving on the Plaintiffs, within 10 days after the conclusion of informal dispute resolution under ¶ 37, an initial Statement of Position regarding the matter in dispute. The Plaintiffs' responsive Statements of Position are due within 20 days after receipt of the initial Statement of Position. All Statements of Position must include supporting factual data, analysis, opinion, and other documentation. A reply, if any, is due within 10 days after receipt of the response. If appropriate, EPA may extend the deadlines for filing statements of position for up to 45 days and may allow the submission of supplemental statements of position.

b. **Formal Decision.** The Director of the Superfund and Emergency Management Division, EPA Region 1, will issue a formal decision resolving the dispute ("Formal Decision") based on the statements of position and any replies and supplemental statements of position. The Formal Decision is binding on Settling Defendants unless they timely seek judicial review under ¶ 40.

c. **Compilation of Administrative Record.** EPA shall compile an administrative record regarding the dispute, which must include all statements of position, replies, supplemental statements of position, and the Formal Decision.

39. **Disputes solely between the MassDEP and Settling Defendants.** Disputes arising under the Consent Decree between the MassDEP and Settling Defendants that relate to: (a) the amount and/or payment of State Future Response Costs owed to the Commonwealth, (b) assessment of stipulated penalties by the Commonwealth, (c) compliance with Commonwealth access rights pursuant to the Consent Decree, (d) compliance with Institutional Controls in which MassDEP holds a real property interest or which is a Notice of Activity and Use Limitation, or (e) compliance with the inspection and monitoring requirements established pursuant to the SOW relative to any Institutional Controls in which MassDEP holds a real property interest or which is a Notice of Activity and Use Limitation, shall be governed in the following manner. The procedures for resolving the disputes mentioned in this Paragraph shall be the same as provided for in Paragraphs 37 and 38, except that each reference to EPA shall read as a reference to MassDEP, each reference to the Director of the Superfund and Emergency Management Division, EPA Region 1, shall be read as a reference to the Assistant Commissioner for the Bureau of Waste Site Cleanup of the MassDEP, and each reference to the United States shall be read as a reference to the Commonwealth.

40. **Judicial Review**

a. Settling Defendants may obtain judicial review of the Formal Decision by filing, within 20 days after receiving it, a motion with the Court and serving the motion on all Parties. The motion must describe the matter in dispute and the relief requested. The parties to the dispute shall brief the matter in accordance with local court rules.

b. **Review on the Administrative Record.** Judicial review of disputes regarding the following issues must be on the administrative record: (i) the adequacy or appropriateness of deliverables required under the Decree; (ii) the adequacy of the performance of the Remedial Action; (iii) whether a Work Takeover is warranted under ¶ 11; (iv) determinations about financial assurance under Section VII; (v) EPA's selection of modified or further response actions; (vi) any other items requiring EPA approval under the Decree; and (vii) any other disputes that the Court determines should be reviewed on the administrative record. For all of these disputes, Settling Defendants bear the burden of demonstrating that the Formal Decision was arbitrary and capricious or otherwise not in accordance with law.

c. Judicial review of any dispute not governed by ¶ 40.b shall be governed by applicable principles of law.

41. **Escrow Account.** For disputes regarding a Future Response Cost or State Future Response Cost billing, Settling Defendants shall: (a) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC"); (b) remit to that escrow account funds equal to the amount of the contested Future Response Costs or State Future Response Costs; and (c) send to EPA or MassDEP, as applicable, in accordance with ¶ 69, copies of the correspondence and of the payment documentation (*e.g.*, the check) that established and funded the escrow account,

including the name of the bank, the bank account number, and a bank statement showing the initial balance in the account. EPA or MassDEP, as applicable, may, in its unreviewable discretion, waive the requirement to establish the escrow account. Settling Defendants shall cause the escrow agent to pay the amounts due to EPA or MassDEP, as applicable, under ¶ 29 or 31, if any, by the deadline for such payment in ¶ 29 or 31.a. Settling Defendants are responsible for any balance due under ¶ 29 or 31 after the payment by the escrow agent.

42. The initiation of dispute resolution procedures under this Section does not extend, postpone, or affect in any way any requirement of this Decree, except as EPA agrees, after a reasonable opportunity for review and comment by MassDEP, or as determined by the Court. Stipulated penalties with respect to the disputed matter will continue to accrue, but payment is stayed pending resolution of the dispute, as provided in ¶ 46.

XII. STIPULATED PENALTIES

43. Unless the noncompliance is excused under Section X (Force Majeure), Settling Defendants are liable to the United States and the Commonwealth for the following stipulated penalties:

a. for any failure: (i) to pay any amount due under Section IX; (ii) to establish and maintain financial assurance in accordance with Section VII; (iii) to submit timely or adequate deliverables under Section 9 of the SOW; or (iv) to meet compliance milestones or obligations under Section 9 of the SOW:

Period of Noncompliance	Penalty Per Noncompliance Per Day
1st through 14th day	\$3,750
15th through 30th day	\$7,500
31st day and beyond	\$15,000

b. for any noncompliance other than those specified in ¶¶ 43.a and 45, including any failure to complete tasks or submit timely or adequate deliverables required by this Decree other than those specified in ¶ 43.a:

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

44. Apportionment of Stipulated Penalties

a. Except as provided in ¶¶ 44.b and 44.c, Settling Defendants shall pay 90% of the stipulated penalties to the United States and 10% of the stipulated penalties to the Commonwealth.

b. When stipulated penalties are assessed by EPA for any failure to comply with the Institutional Controls Implementation and Assurance Plans under ¶ 5.2 of the SOW, the

Settling Defendant shall pay 50% of stipulated penalties to the United States and 50% of stipulated penalties to the Commonwealth.

c. Settling Defendants shall pay 90% of stipulated penalties to the Commonwealth and 10% of stipulated penalties to the United States for any: (i) failure to pay State Future Response Costs owed to the Commonwealth as required by Section IX (Payments for Response Costs), (ii) failure to provide MassDEP with any written or oral notice in accordance with the requirements of this Consent Decree, (iii) failure to provide MassDEP any report or other document in accordance with the requirements of this Consent Decree, (iv) failure to secure required access for the Commonwealth pursuant to the Consent Decree, (v) failure to comply with the terms of any Institutional Controls for which the Commonwealth or MassDEP, at the time of such violation, is the holder of any real property interest or which is a Notice of Activity and Use Limitation, or (vi) failure to perform the inspection and monitoring requirements established pursuant to the SOW relative to any Institutional Controls in which the Commonwealth or MassDEP holds a real property interest or which is a Notice of Activity and Use Limitation.

45. **Work Takeover Penalty.** If EPA commences a Work Takeover, Settling Defendants are liable for a stipulated penalty in the amount of \$5,000,000. This stipulated penalty is in addition to the remedy available to EPA under ¶ 22 (Access to Financial Assurance) to fund the performance of the Work by EPA.

46. **Accrual of Penalties.** Stipulated penalties accrue from the date performance is due, or the day a noncompliance occurs, whichever is applicable, until the date the requirement is completed or the final day of the correction of the noncompliance. Nothing in this Decree prevents the simultaneous accrual of separate penalties for separate noncompliances with this Decree. Stipulated penalties accrue regardless of whether Settling Defendants have been notified of their noncompliance, and regardless of whether Settling Defendants have initiated dispute resolution under Section XI, provided, however, that no penalties will accrue as follows:

a. with respect to a submission that EPA subsequently determines is deficient under ¶ 8.6 of the SOW, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency;

b. with respect to a matter that is the subject of dispute resolution under Section XI, during the period, if any, beginning on the 21st day after the later of the date that EPA's Statement of Position or, as the case may be, MassDEP's Statement of Position is received or the date that Settling Defendants' reply thereto (if any) is received until the date of the Formal Decision under ¶ 38.b or, as the case may be, ¶ 39; or

c. with respect to a matter that is the subject of judicial review by the Court under ¶ 40, during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute.

47. **Demand and Payment of Stipulated Penalties.** EPA, after a reasonable opportunity for review and comment by MassDEP, or for matters identified in ¶ 44.c, the

Commonwealth, after a reasonable opportunity for review and comment by EPA, may send Settling Defendants a demand for stipulated penalties. The demand will include a description of the noncompliance and will specify the amount of the stipulated penalties owed. Settling Defendants may initiate dispute resolution under Section XI within 30 days after receipt of the demand. Settling Defendants shall pay the amount demanded or, if they initiate dispute resolution, the uncontested portion of the amount demanded, within 30 days after receipt of the demand. Settling Defendants shall pay the contested portion of the penalties determined to be owed, if any, within 30 days after the resolution of the dispute. Each payment for: (a) the uncontested penalty demand or uncontested portion, if late; and (b) the contested portion of the penalty demand determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the demand through the date of payment. Settling Defendants shall make payment to the United States at <https://www.pay.gov> using the link for “EPA Miscellaneous Payments Cincinnati Finance Center,” including references to the Site/Spill ID and DJ numbers listed in ¶ 69, and the purpose of the payment. Settling Defendants shall make payment to the Commonwealth by EFT in accordance with current EFT procedures, using the following account information:

Commonwealth of Massachusetts, Office of the Attorney General
 ABA No. 011075150
 Account No. 00088882022
 Santander Bank
 75 State Street
 Boston, MA 02109
 TIN: 046002284
 Reference Docket No. __ [to be inserted at time of payment]__
 and shall include the following information: Olin Chemical Superfund Site, RTN
 3-0000471.

Any payments received by the Commonwealth after 4:00 P.M. (Eastern Time) will be credited on the next business day. At the time of payment, Settling Defendants shall send a notice of this payment to DOJ, and EPA, and the Commonwealth, in accordance with ¶ 69. The payment of stipulated penalties and Interest, if any, does not alter any obligation by Settling Defendants under the Decree.

48. Nothing in this Decree limits the authority of the United States and the Commonwealth: (a) to seek any remedy otherwise provided by law for Settling Defendants’ failure to pay stipulated penalties or Interest; or (b) to seek any other remedies or sanctions available by virtue of Settling Defendants’ noncompliances with this Decree or of the statutes and regulations upon which it is based, including penalties under section 122(l) of CERCLA, Chapter 21E, and Mass. Gen. Laws ch. 21A, § 16, provided, however, that the United States and the Commonwealth may not seek civil penalties under section 122(l) of CERCLA for any noncompliance for which a stipulated penalty is provided for in this Decree, except in the case of a willful noncompliance with this Decree.

49. Notwithstanding any other provision of this Section: (a) the United States may, in its unreviewable discretion, waive any portion of stipulated penalties due to the United States that has accrued under this Decree; and (b) the Commonwealth may, in its unreviewable

discretion, waive any portion of stipulated penalties due to the Commonwealth that has accrued under this Decree.

XIII. COVENANTS BY PLAINTIFFS

50. **United States' Covenants for Settling Defendants.** Subject to ¶ 53, the United States covenants not to sue or to take administrative action against Settling Defendants under sections 106 and 107(a) of CERCLA regarding the Work, Past Response Costs, and Future Response Costs.

51. **Commonwealth's Covenants for Settling Defendants.** Subject to ¶ 53, the Commonwealth covenants not to sue or to take administrative action against Settling Defendants under section 107(a) of CERCLA and Chapter 21E regarding the Work, State Past Response Costs, and State Future Response Costs.

52. The covenants under ¶¶ 50 and 51: (a) take effect upon the Effective Date; (b) are conditioned on the satisfactory performance by Settling Defendants of the requirements of this Decree; (c) extend to the successors of each Settling Defendant but only to the extent that the alleged liability of the successor of the Settling Defendant is based solely on its status as a successor of the Settling Defendant; and (d) do not extend to any other person.

53. **General Reservations.** Notwithstanding any other provision of this Decree, the United States and the Commonwealth reserve, and this Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters not expressly included within Plaintiffs' covenants not to sue. Notwithstanding any other provision of this Consent Decree, the United States and the Commonwealth reserve all rights against Settling Defendants, including the following:

- a. liability for failure by Settling Defendants to meet a requirement of this Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. liability based on Settling Defendants' ownership of the Site when such ownership commences after Settling Defendants' signature of this Decree;
- d. liability based on Settling Defendants' operation of the Site when such operation commences after Settling Defendants' signature of this Decree and does not arise solely from Settling Defendants' performance of the Work;
- e. liability based on Settling Defendants' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, after signature of this Decree by Settling Defendants, other than as provided in the Record of Decision, under this Decree, or ordered by EPA;
- f. liability for additional operable units at the Site or the final response action;

g. liability for costs that the United States or the Commonwealth will incur regarding the Site but that are not within the definition of Future Response Costs or State Future Response Costs;

h. liability, prior to achievement of Performance Standards, for additional response actions that EPA, after a reasonable opportunity for review and comment by MassDEP, determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the Remedial Action, but that are not covered by ¶ 9.b;

i. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

j. liability under Chapter 21E for releases or sites for which response actions are not adequately regulated pursuant to 310 C.M.R. § 40.0111(1);

k. liability for violations of federal or state law that occur during or after implementation of the Work; and

l. criminal liability.

54. Subject to ¶¶ 50 and 51, nothing in this Decree limits any authority of Plaintiffs to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or to request a Court to order such action.

XIV. COVENANTS BY SETTLING DEFENDANTS

55. Covenants by Settling Defendants

a. Subject to ¶ 56, Settling Defendants covenant not to sue and shall not assert any claim or cause of action against the United States or the Commonwealth under CERCLA, section 7002(a) of RCRA, the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, the State Constitution, State law, including Chapter 21E, or at common law regarding the Work, past response actions relating to the Site, Past Response Costs, Future Response Costs, State Past Response Costs, and State Future Response Costs.

b. Subject to ¶ 56, Settling Defendants covenant not to seek reimbursement from the Fund through CERCLA or any other federal or State law for costs of the Work and past response actions regarding the Site, Past Response Costs, and Future Response Costs, State Past Response Costs, and State Future Response Costs.

56. **Settling Defendants' Reservation.** The covenants in ¶ 55 do not apply to any claim or cause of action brought, or order issued, after the Effective Date by the United States or the Commonwealth to the extent such claim, cause of action, or order is within the scope of a reservation under ¶¶ 53.a through 53.i.

57. ***De Micromis Waiver.*** Settling Defendants shall not assert any claims and shall waive all claims or causes of action (including claims or causes of action under sections 107(a) and 113 of CERCLA or sections 4(A) and 5(a) of Chapter 21E) that they may have for all matters relating to the Site against any person where the person’s liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances or hazardous materials at the Site, or having accepted for transport for disposal or treatment of hazardous substances or hazardous materials at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances or hazardous materials contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials. This waiver does not apply to any claim or cause of action against any person otherwise covered by this Paragraph if EPA, determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; (ii) such person has failed to comply with any information request or administrative subpoena issued under sections 104(e) or 122(e)(3)(B) of CERCLA or section 3007 of RCRA, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or (iii) such person has been convicted of a criminal violation for the conduct to which this Paragraph would apply and that conviction has not been vitiated on appeal or otherwise. This waiver does not apply to any claim or cause of action against any person otherwise covered by this Paragraph if MassDEP determines that: (i) the materials containing hazardous materials contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; (ii) such person has failed to comply with any information request or administrative subpoena issued under Chapter 21E or applicable State law; or (iii) such person has been convicted of a criminal violation for the conduct to which this Paragraph would apply and that conviction has not been vitiated on appeal or otherwise. This Paragraph does not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person otherwise covered by this waiver if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

XV. EFFECT OF SETTLEMENT; CONTRIBUTION

58. The Parties agree and the Court finds that: (a) the complaint filed by the United States and the Commonwealth in this action is a civil action within the meaning of section 113(f)(1) of CERCLA; (b) this Decree constitutes a judicially approved settlement under which each Settling Defendant has, as of the Effective Date, resolved its liability to the United States and the Commonwealth within the meaning of sections 113(f)(2) and 113(f)(3)(B) of CERCLA; and (c) each Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Decree. The “matters addressed” in this Decree are the Work, Past Response Costs, Future Response Costs, State Past Response Costs, and State Future Response Costs, provided, however, that if the United States or the Commonwealth exercises rights under the reservations in ¶¶ 53.a through 53.h, the “matters addressed” in this Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

59. Each Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Decree, notify DOJ, EPA, the Attorney General's Office, and MassDEP no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Decree, notify DOJ, EPA, the Attorney General's Office, and MassDEP within 10 days after service of the complaint on such Settling Defendant. In addition, each Settling Defendant shall notify DOJ, EPA, the Attorney General's Office, and MassDEP within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

60. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated against any Settling Defendant by either Plaintiff for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, claim preclusion(res judicata), issue preclusion (collateral estoppel), claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the Commonwealth in the subsequent proceeding were or should have been brought in the instant case.

61. Nothing in this Decree diminishes the right of the United States or the Commonwealth under section 113(f)(2) and (3) of CERCLA and Chapter 21E, as applicable, to pursue any person not a party to this Decree to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to section 113(f)(2) of CERCLA or Chapter 21E.

XVI. RECORDS

62. **Settling Defendant Certification.** Each Settling Defendant certifies individually that: (a) to the best of its knowledge and belief, after thorough inquiry it has not altered, mutilated, discarded, destroyed or otherwise disposed of any documents and electronically stored information relating to the Site, including information relating to its potential liability under CERCLA or Chapter 21E regarding the Site, since the earlier of notification of potential liability by the United States or the Commonwealth or the filing of suit against it regarding the Site; and (b) it has fully complied with any and all EPA requests for information under sections 104(e) and 122(e) of CERCLA, and section 3007 of RCRA, and any and all MassDEP requests for information pursuant to Chapter 21E.

63. **Retention of Records and Information**

a. Settling Defendants shall retain, and instruct their contractors and agents to retain, the following documents and electronically stored data ("Records") until 10 years after the Certification of Work Completion under ¶ 6.10 of the SOW (the "Record Retention Period"):

- (1) All records regarding Settling Defendants' liability under CERCLA or Chapter 21E regarding the Site;

- (2) All reports, plans, permits, and documents submitted to EPA or MassDEP in accordance with this Decree, including all underlying research and data; and
- (3) All data developed by, or on behalf of, Settling Defendants in the course of performing the Remedial Action.

b. Settling Defendants shall retain all Records regarding the liability of any person under CERCLA or Chapter 21E regarding the Site during the Record Retention Period.

c. At the end of the Record Retention Period, Settling Defendants shall notify EPA and MassDEP that it has 90 days to request the Settling Defendants' Records subject to this Section. Settling Defendants shall retain and preserve their Records subject to this Section until 90 days after EPA and MassDEP's receipt of the notice. These record retention requirements apply regardless of any corporate record retention policy.

64. Settling Defendants shall provide to EPA and MassDEP, upon request, copies of all Records and information required to be retained under this Section. Settling Defendants shall also make available to EPA and MassDEP, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

65. Privileged and Protected Claims

a. Settling Defendants may assert that all or part of a record requested by Plaintiffs is privileged or protected as provided under federal law, in lieu of providing the record, provided that Settling Defendants comply with ¶ 65.b, and except as provided in ¶ 65.c.

b. If Settling Defendants assert a claim of privilege or protection, they shall provide Plaintiffs with the following information regarding such record: its title; its date; the name, title, affiliation (*e.g.*, company or firm), and address of the author, of each addressee, and of each recipient; a description of the record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a record, Settling Defendants shall provide the record to Plaintiffs in redacted form to mask the privileged or protected portion only. Settling Defendants shall retain all records that they claim to be privileged or protected until Plaintiffs have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Settling Defendants' favor.

c. Settling Defendants shall not make any claim of privilege or protection regarding: (1) any data regarding the Site, including all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological or engineering data, or the portion of any other record that evidences conditions at or around the Site; or (2) the portion of any record that Settling Defendants are required to create or generate in accordance with this Decree.

66. Confidential Business Information (CBI) Claims. Settling Defendants may claim that all or part of a record provided to EPA under this Section is CBI to the extent permitted by and in accordance with section 104(e)(7) of CERCLA and 40 C.F.R. § 2.203(b), and, with respect to all or part of a record provided to MassDEP under this Section, is CBI to the

to the extent permitted by and in accordance with section 12 of Chapter 21E and its implementing regulations. Settling Defendants shall segregate and shall clearly identify all records or parts thereof submitted under this Decree for which they claim is CBI by labeling each page or each electronic file “claimed as confidential business information” or “claimed as CBI.” Records that Settling Defendants claim to be CBI will be afforded the protection specified in 40 C.F.R. part 2, subpart B, and if determined to be confidential by MassDEP, will be afforded the protection provided by section 12 of Chapter 21E and its implementing regulations. If no CBI claim accompanies records when they are submitted to EPA, or if EPA notifies Settling Defendants that the records are not entitled to confidential treatment 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. If no CBI claim accompanies records when they are submitted to MassDEP, or if MassDEP notifies Settling Defendants that the records are not entitled to confidential treatment under the standards of Massachusetts law, including section 12 of Chapter 21E, the public may be given access to such records without further notice to Settling Defendants.

67. In any proceeding under this Decree, validated sampling or monitoring data generated in accordance with the SOW and reviewed and approved by EPA, if relevant to the proceeding, is admissible as evidence, without objection.

68. Notwithstanding any provision of this Decree, Plaintiffs retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, Chapter 21E, and any other applicable statutes or regulations.

XVII. NOTICES AND SUBMISSIONS

69. All agreements, approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, waivers, and requests specified in this Decree must be in writing unless otherwise specified. Whenever a notice is required to be given or a report or other document is required to be sent by one Party to another under this Decree, it must be sent as specified below. Whenever Settling Defendants must send such document to one Plaintiff, or whenever one Plaintiff sends such document to Settling Defendants, a copy must be provided to the other Plaintiff. All notices under this Section are effective upon receipt, unless otherwise specified. In the case of emailed notices, there is a rebuttable presumption that such notices are received on the same day that they are sent. Any Party may change the method, person, or address applicable to it by providing notice of such change to all Parties.

As to DOJ: *via email to:*
 eescdcopy.enrd@usdoj.gov
 Re: DJ # 90-11-3-08919/1

As to EPA: *via email to:*
Olson.Bryan@epa.gov
and
Morash.Melanie@epa.gov
and
Kelly.Christopher@epa.gov
Re: Site/Spill ID # 01CH

via regular mail for oversized documents upon request by EPA in accordance with ¶ 8.3 of the SOW to:

Melanie Morash (EPA Project Coordinator)
Remedial Project Manager
U.S. Environmental Protection Agency
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109

and
Christopher Kelly (EPA Project Coordinator)
Remedial Project Manager
U.S. Environmental Protection Agency
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109
Re: Site/Spill ID # 01CH

As to the Regional Financial Management Officer: *via email to:*
Schofield.Shannon@epa.gov *and*
R1.Records-SEMS@epa.gov
Re: Site/Spill ID # 01CH

via regular mail for the financial assurance mechanisms referenced in ¶ 17.a or 17.b to:
U.S. Environmental Protection Agency Region 1
SEMS Records & Information Center
Financial Assurance Repository
5 Post Office Square, Suite 100 (02-3)
Boston, MA 02109-3912
Re: Site/Spill ID # 01CH

As to the Commonwealth or the Attorney General's Office: *via email to:*
seth.schofield@mass.gov

As to MassDEP: *via email to:*
garry.waldeck@mass.gov

via regular mail for oversized documents upon request by MassDEP in accordance with ¶ 8.3 of the SOW to:

Garry Waldeck (MassDEP Project Coordinator)
State Project Manager–Olin Chemical Superfund Site
Department of Environmental Protection Bureau of
Waste Site Cleanup
One Winter Street, 2nd Floor
Boston, MA 02108

As to Settling *via email to:*
Defendants: JMCashwell@olin.com

XVIII. APPENDIXES

70. The following appendixes are attached to and incorporated into this Decree:

“Appendix A” is the Record of Decision.

“Appendix B” is the SOW.

“Appendix C” is the map of the Site.

“Appendix D” is the RI/FS AOC.

“Appendix E” is the Lien Release Agreement.

“Appendix F” is a letter, dated December 23, 2022, from Wilmington Woburn Industrial, LLC to EPA and MassDEP requesting that EPA and MassDEP consider entering into a prospective purchaser agreement.

XIX. MODIFICATIONS TO DECREE

71. Except as provided in ¶ 9 of the Decree and ¶ 8.6 of the SOW (Approval of Deliverables), nonmaterial modifications to Sections I through XXIII and the Appendixes must be in writing and are effective when signed (including electronically signed) by the Parties. Material modifications to Sections I through XXIII and the Appendixes must be in writing, signed (which may be electronically signed) by the Parties, and are effective upon approval by the Court. As to changes to the remedy, a modification to the Decree, including the SOW, to implement an amendment to the Record of Decision that “fundamentally alters the basic features” of the Remedial Action within the meaning of 40 C.F.R. § 300.435(c)(2)(ii) will be considered a material modification.

XX. SIGNATORIES

72. The undersigned representative of the United States, the undersigned representative of the Commonwealth, and each undersigned representative of a Settling Defendant certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind such Party to this document.

XXI. PRE-ENTRY PROVISIONS

73. If for any reason the Court should decline to approve this Decree in the form presented, this agreement, except for ¶ 74, ¶ 75 and ¶ 76, is voidable at the sole discretion of any Party and its terms may not be used as evidence in any litigation between the Parties.

74. This Decree will be lodged with the Court for at least 30 days for public notice and comment in accordance with section 122(d)(2) of CERCLA and 28 C.F.R. § 50.7. The United States may withdraw or withhold its consent if the comments regarding the Decree disclose facts or considerations that indicate that the Decree is inappropriate, improper, or inadequate.

75. In the event of the United States' withdrawal from this Consent Decree, the Commonwealth reserves its right to withdraw from this Consent Decree. The Commonwealth also reserves the right to withdraw or withhold its consent to the entry of this Consent Decree if comments received disclose facts or considerations that show that the Consent Decree violates state law. In the event of the Commonwealth's withdrawal from this Consent Decree, the United States reserves its right to withdraw from this Consent Decree.

76. Settling Defendants agree to not oppose or appeal the entry of this Decree.

XXII. INTEGRATION

77. This Decree constitutes the entire agreement among the Parties regarding the subject matter of the Decree and supersedes all prior representations, agreements, and understandings, whether oral or written, regarding the subject matter of the Decree.

XXIII. FINAL JUDGMENT

78. Upon entry of this Decree by the Court, this Decree constitutes a final judgment under Fed. R. Civ. P. 54 and 58 among the Parties.

SO ORDERED this ____ day of _____, 20__.

United States District Judge

Signature Page for Consent Decree in *U.S. v. American Biltrite Inc., et al.* (D. Mass.)

FOR THE UNITED STATES:

Todd Kim
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division

May 11, 2023
Dated

/s/ Patrick B. Bryan
Patrick B. Bryan
Senior Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
Ben Franklin Station
P.O. Box 7611
Washington, DC 20044-7611
patrick.bryan@usdoj.gov
202-616-8299

Signature Page for Consent Decree in *U.S. v. American Biltrite Inc., et al.* (D. Mass.)

**FOR THE U.S. ENVIRONMENTAL
PROTECTION AGENCY:**

Olson, Bryan

Digitally signed by Olson,
Bryan
Date: 2023.04.11 15:03:00
-04'00'

Bryan Olson
Director, Superfund and Emergency
Management Division
U.S. Environmental Protection Agency
Region 1

MANCHAK NG

Digitally signed by MANCHAK
NG
Date: 2023.04.07 12:28:00
-04'00'

Man Chak Ng
Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109

**KEVIN
PECHULIS**

Digitally signed by KEVIN
PECHULIS
Date: 2023.04.07 12:32:36
-04'00'

Kevin Pechulis
Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109

Maximilian Boal

Digitally signed by Maximilian
Boal
Date: 2023.04.07 12:49:14 -04'00'

Maximilian Boal
Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109

Signature Page for Consent Decree in *U.S. v. American Biltrite Inc., et al.* (D. Mass.)

**FOR THE COMMONWEALTH OF
MASSACHUSETTS:**

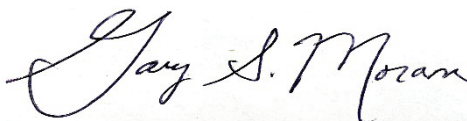
ANDREA JOY CAMPBELL
Attorney General

April 7, 2023
Dated



Seth Schofield
Senior Appellate Counsel
Energy and Environment Bureau
Massachusetts Attorney General's Office
One Ashburton Place
Boston, MA 02108
seth.schofield@mass.gov
(617) 963-2436

**FOR THE MASSACHUSETTS
DEPARTMENT OF ENVIRONMENTAL
PROTECTION:**



March 7, 2023
Dated

Gary S. Moran
Acting Commissioner
Department of Environmental Protection
100 Cambridge Street, 9th Floor
Boston, MA 02114

Signature Page for Consent Decree in *U.S. v. American Biltrite Inc., et al.* (D. Mass.)

FOR: American Biltrite Inc.

1/10/23
Dated



Name: RICHARD G. MARCUS
Title: PRESIDENT & COO
Address: 57 RIVER ST. SUITE 302
WELLESLEY HILLS, MA 02481

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: _____
Title: _____
Company: CORPORATION SERVICE COMPANY
Address: 84 STATE ST
BOSTON, MA 02109
Phone: _____
email: _____

Signature Page for Consent Decree in *U.S. v. American Biltrite Inc., et al.* (D. Mass.)

FOR: NOR-AM AGRO LLC

1.12.23

Dated



Name: MARK E. BOWERS

Title: SR. REMEDIATION MGR. BAYER U.S. LLC

Address: 800 N. LINDBERGH BLVD.
ST. LOUIS, MO 63167

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: KENNETH J. WARREN

Title: COUNSEL

Company: WARREN ENVIRONMENTAL COUNSEL LLC

Address: 975 MILL ROAD MILLRIDGE MANOR HOUSE STE A
BRYN MAWR, PA 19010

Phone: (484) 383-4830

email: KWARREN@WARRENFENCOUNSEL.COM

Signature Page for Consent Decree in *U.S. v. American Biltrite Inc., et al.* (D. Mass.)

FOR: OLIN CORPORATION

1/3/2023

Dated

Name: Scott M. Sutton

Title: CEO

Address: 190 Carondelet Plaza, Suite 1530
Clayton MO 63105

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: Lisa Funderburg

Title: VP-Regulatory Audit & Chief EHS Counsel

Company: Olin Corporation

Address: 190 Carondelet Plaza, Suite 1530
Clayton MO 63105

Phone: 217 494 0947

email: lafunderburg@olin.com

Signature Page for Consent Decree in *U.S. v. American Biltrite Inc., et al.* (D. Mass.)

FOR: STEPAN COMPANY

01/11/2023
Dated



Name: David G. Kabbes
Title: Vice President, General Counsel and Secretary
Address: 1101 Skokie Boulevard
Northbrook, IL 60062

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: _____
Title: _____
Company: The Corporation Trust Company
Address: 1201 Orange Street, Corporation Trust Center
Wilmington, DE 19801
Phone: _____
email: _____