

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

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UNITED STATES OF AMERICA  
STATE OF DELAWARE,

Plaintiffs,

Civil Action No. 1:22-cv-731

v.

HERCULES INCORPORATED, et al.,

Defendants.  
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**CONSENT DECREE**

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## I. BACKGROUND

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

B. The Complaint seeks, *inter alia*: (1) reimbursement of costs incurred by EPA and the Department of Justice (“DOJ”) for response actions at the Delaware Sand & Gravel Landfill Superfund Site in New Castle County, Delaware (“Site” or “DS&G Site”), together with accrued interest; and (2) performance of response actions by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (“NCP”).

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Delaware (the “State”) on May 9, 2019, of negotiations with potentially responsible parties (“PRPs”) regarding the implementation of the remedial action (“RA”) for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree (“CD”).

D. The State has joined the United States in the Complaint, alleging that the defendants are liable to the State under Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), respectively, and 7 *Del.C.* §6308, for its investigative, planning, response and enforcement costs under CERCLA and State law.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Department of Interior (“DOI”) and the National Oceanic and Atmospheric Administration (“NOAA”) on May 7, 2019, 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 trustee(s) to participate in the negotiation of this CD.

F. The defendants that have entered into this CD (“Settling Defendants” or “SDs”) do not admit any liability or wrongdoing for any of the transactions, acts, or omissions alleged in the Complaint, nor do they acknowledge that the alleged release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed 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 September 8, 1983, 48 Fed. Reg. 40650.

H. In 1988, EPA selected a remedy for the Site in a Record of Decision (“1988 ROD”). The remedy was modified by a ROD amendment in 1993 (“1993 ROD Amendment”) and an Explanation of Significant Differences in 2003 (“2003 ESD”). Among other things, the remedy, as modified, included a slurry-wall containment system with *in-situ* soil treatment by soil vapor extraction and bioventing at the drum disposal area (“DDA”).

I. On June 14, 1995, the United States District Court for the District of Delaware entered a Remedial Design/Remedial Action Consent Decree (“1995 RD/RA CD”), whereby the settling defendants agreed to implement the remedy set forth in the 1988 ROD, as amended by the 1993 ROD Amendment. The settling defendants did not include New Castle County. Certain elements of this remedy, including operation and maintenance at the Inert Area and the Grantham South Area, continue to be conducted pursuant to the 1995 RD/RA CD, which shall remain in full force and effect, notwithstanding the Work to be conducted under this CD.

J. EPA concluded in its third Five-Year Review Report for the Site, dated September 21, 2005, that the remedy at the DDA was not functioning as designed due to gaps in the native clay unit which forms the base of the slurry-wall containment system.

K. EPA concluded based on its fourth Five-Year Review for the Site that additional response actions were required at the DDA due to the failure of the constructed remedy to meet performance standards. EPA’s September 16, 2010 Five-Year Review Report recommended the performance of a feasibility study to develop a comprehensive source control and groundwater remediation strategy.

L. In April 2010, EPA notified a group of settling defendants (“DS&G Remedial Trust”) of the need to perform additional Site characterization and a feasibility study to evaluate additional response actions for the DDA source area and the impacted Upper Potomac Aquifer, including the Llangollen well field.

M. The DS&G Remedial Trust completed a Supplemental Site Characterization Report-Revision 2 (“SSCR”) in January 2016, and thereafter completed a Feasibility Study – Revision 1 (“FS”) in May 2016.

N. Based on the findings of the SSCR and FS, EPA amended the remedy set forth in the 1988 ROD, as amended by the 1993 ROD Amendment, in an Amended Record of Decision issued on December 12, 2017 (“2017 ROD Amendment”) (attached as Appendix A).

Q. On April 12, 2018, the County received a General Notice Letter from EPA stating that it considered certain PRPs at the Army Creek Landfill Site as PRPs with respect to the remedial action selected in the 2017 ROD Amendment at the DS&G Site due to comingling of groundwater underneath the Army Creek Landfill Site and the DS&G Site (“County PRP Letter”). On August 11, 2020, the County received a Special Notice Letter from EPA.

R. Based on the information presently available to EPA and the State, EPA and the State believe that the Work will be properly and promptly conducted by Performing SDs if conducted in accordance with this CD and its appendices.

S. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the 2017 ROD Amendment and the Work to be performed by Performing SDs shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

T. On May 28, 2019, Settling Defendant New Castle County voluntarily entered into a Settlement Agreement with the DS&G Remedial Trust (“NCC 2019 Settlement Agreement”), at the request of the United States; the NCC 2019 Settlement Agreement includes, among other

things, New Castle County's contribution to the Remedial Action selected in the 2017 ROD Amendment.

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

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

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1367 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over SDs. Solely for the purposes of this CD and the underlying complaints, SDs waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. SDs shall not challenge the terms of this CD or this Court's jurisdiction to enter and enforce this CD.

## **III. PARTIES BOUND**

2. This CD is binding upon the United States and the State and upon SDs and their respective successors and assigns. Any change in ownership or corporate or other legal status of a SD including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such SD's responsibilities under this CD.

3. Performing SDs shall provide a copy of this CD to each contractor hired to perform the Work and to each person representing any Performing SD with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this CD. Performing SDs or their contractors shall provide written notice of the CD to all subcontractors hired to perform any portion of the Work. Performing SDs shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this CD. With regard to the activities undertaken pursuant to this CD, each contractor and subcontractor shall be deemed to be in a contractual relationship with Performing SDs within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

## **IV. DEFINITIONS**

4. Unless otherwise expressly provided in this CD, terms used in this CD that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this CD or its appendices, the following definitions shall apply solely for purposes of this CD:

"Affected Property" shall mean all real property at the Site and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions, and/or Institutional Controls are needed to implement the Remedial Action, including, but not limited to, the following properties, or portions thereof: property along Grantham Lane owned by Mr. Vincent J. Dell'Aversano (tax map parcel 1003500006), property between Army Creek

and Grantham Lane owned by New Castle County resulting from a condemnation action (tax map parcels 1003500056, 1003500057, and 1003510001), property between Army Creek, Norfolk Southern Railroad and Route 13 owned by New Castle County (tax map parcel 1003500002), property along Grantham Lane owned by Grantham Lane Associates (tax map parcel 1003500005), 761 Grantham Lane owned by Cirillo Bros Development Co LLC (tax map parcel 1003500007), property owned by Llangollen Green Maintenance, Inc. (tax map parcel 1003510040), property northeast of and adjacent to tax map parcel 1003500006 and south of and adjacent to tax map parcel 1003600007 owned by Norfolk Southern Railroad, property along the Norfolk Southern Railroad owned by Walnut Hill 1031 Exchange LLC (tax map parcel 1003600007), and additional properties where piping will need to be laid to convey groundwater from extraction wells to a pump station pursuant to the Administrative Settlement Agreement and Order on Consent for Remedial Design (Docket No. CERCLA No. CERCLA-03-2018-0116DC).

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

“Consent Decree” or “CD” shall mean this consent decree and all appendices attached hereto (listed in Section XXIII). In the event of conflict between this CD and any appendix, this CD shall control.

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

“Delaware Sand and Gravel 0345 Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“Disbursement Delaware Sand and Gravel Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and ¶ 41 (Creation of Disbursement Delaware Sand and Gravel Special Account).

“DNREC” shall mean the Delaware Department of Natural Resources & Environmental Control and any successor departments or agencies of the State.

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

“Effective Date” shall mean the date upon which the approval of this CD is recorded on the Court’s docket.

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

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

“Future Oversight Costs” shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising Performing SDs’ performance of the Work to determine whether such performance is consistent with the requirements of this CD, including costs incurred in reviewing deliverables submitted pursuant to this CD, as well as costs incurred in overseeing implementation of the Work; however, Future Oversight Costs do not include, *inter alia*: the costs incurred by the United States pursuant to ¶ 11 (Emergencies and Releases), Section VII (Remedy Review), Section VIII (Property Requirements), and ¶ 32 (Access to Financial Assurance), or the costs incurred by the United States in enforcing this CD, including all costs incurred pursuant to Section XIV (Dispute Resolution), and all litigation costs.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States, including the Agency for Toxic Substances and Disease Registry (“ATSDR”), incurs in reviewing or developing deliverables submitted pursuant to this CD, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this CD, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to ¶ 11 (Emergencies and Releases), ¶ 12 (Community Involvement) (including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)), ¶ 32 (Access to Financial Assurance), Section VII (Remedy Review)(including EPA’s costs of performing such reviews), Section VIII (Property Requirements) (including the cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions and/or to secure, implement, monitor, maintain, or enforce Institutional Controls including the amount of just compensation), and Section XIV (Dispute Resolution), and all litigation costs. Future Response Costs shall also include all Interim Response Costs.

“Institutional Controls” or “ICs” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices 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 non-interference with, or ensure the protectiveness of the RA; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

“Interim Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, (a) paid by the United States in connection with the Site between April 24, 2019 and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“Interest Earned” shall mean interest earned on the amount in the Disbursement Delaware Sand and Gravel Special Account, which shall be computed monthly at a rate based on the annual return on investments of the EPA Hazardous Substance Superfund. The applicable rate of interest shall be the rate in effect at the time the interest accrues.

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

“NCC 2019 Settlement Agreement” shall mean the Settlement Agreement entered into between New Castle County and the Delaware Sand and Gravel Remedial Trust dated May 28, 2019 in connection with the Site.

“Non-Performing SDs” shall mean those Parties identified in Appendix F.

“Non-Settling Owner” shall mean any person, other than a SD, that owns or controls any Affected Property, including Mr. Vincent J. Dell’Aversano, Grantham Lane Associates, LLC, Cirillo Bros. Development Co., LLC, Llangollen Green Maintenance, Walnut Hill 1031 Exchange, LLC, and Norfolk Southern Railroad.

“Non-Settling Owner’s Affected Property” means Affected Property owned or controlled by Non-Settling Owner.

“Operation and Maintenance” or “O&M” shall mean all activities required to operate, maintain, and monitor the effectiveness of the RA as specified in the SOW or any EPA-approved O&M Plan.

“Owner SD” shall mean any SD that owns or controls any Affected Property, including New Castle County which acquired its Affected Property by condemnation.

“Owner SD’s Affected Property” shall mean Affected Property owned or controlled by Owner SD.

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

“Parties” shall mean the United States, the State of Delaware and SDs.

“Past Response Costs” shall mean all unreimbursed costs or costs not previously settled, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through April 23, 2019, plus Interest on all such costs that has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

“Performance Standards” or “PS” shall mean the cleanup levels and other measures of achievement of the remedial action objectives, as set forth in the 2017 ROD Amendment.

“Performing SDs” shall mean those Parties identified in Appendix G.

“Plaintiffs” shall mean the United States and the State of Delaware.

“Proprietary Controls” shall mean easements or covenants running with the land that (a) limit land, water, or other resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded in the appropriate land records office.

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

“2017 ROD Amendment” shall mean EPA’s second amendment to the 1988 ROD relating to the Delaware Sand & Gravel Landfill Site, signed by EPA on December 1, 2017, and all attachments thereto. The 1988 ROD was previously modified by a September 30, 1993 Amendment (“1993 ROD Amendment”) and a July 2003 Explanation of Significant Differences (“ESD”). The 2017 ROD Amendment is attached as Appendix A.

“Remedial Action” or “RA” shall mean the remedial action selected in the 2017 ROD Amendment.

“Remedial Design” or “RD” shall mean those activities undertaken pursuant to the May 29, 2018 Administrative Settlement Agreement and Order on Consent for Remedial Design (Docket No. CERCLA-03-2018-0116DC) (“RD AOC”), as amended. The Respondents to the RD AOC are as follows: The Chemours Company FC, LLC; Hercules LLC; Waste Management of Delaware, Inc.; SC Holdings, Inc.; Cytec Industries, Inc.; Zeneca Inc.; and Bayer CropScience Inc.

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

“Settling Defendants” or “SDs” shall mean those Parties identified in Appendix D.

“Site” shall mean the Delaware Sand & Gravel Landfill Superfund Site, encompassing approximately 27 acres, located two miles south of the City of New Castle in New Castle County, Delaware. The Site is located along Grantham Lane, east of U.S. Highway 13 (Dupont Highway) and west of Delaware Route 9 (River Road). It comprises an area of residential and light-industrial land use and is bounded to the north and northeast by the Norfolk Southern Railroad tracks and to the west by Army Creek which discharges into the Delaware River less than one mile east of the Site and depicted generally on the map attached as Appendix C. The Site includes all contaminated groundwater affected by the release of hazardous substances from the Delaware Sand and Gravel Landfill Superfund Site and from the Eastern Lobe of the Army Creek Landfill Superfund Site, but excludes groundwater impacted solely by releases of contaminants, pollutants or hazardous substances from the Western Lobe of the Army Creek Landfill Superfund Site.

“State” shall mean the State of Delaware.

“Statement of Work” or “SOW” shall mean the document describing the activities Performing SDs must perform to implement the RD, the RA, and O&M regarding the Site, which is attached as Appendix B.

“Supervising Contractor” shall mean the principal contractor retained by Performing SDs to supervise and direct the implementation of the Work under this CD.

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

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) or 7 *Del. C.* § 9103 (15); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33) or 7 *Del. C.* § 6002(38); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27) or 7 *Del. C.* §§ 6002(53) or 6302(12); and (4) any “hazardous waste” under 7 *Del. C.* § 6302(8).

“Work” shall mean all activities and obligations Performing SDs are required to perform under this CD, including financial compensation made to Artesian Water Company for continued operation and maintenance of the groundwater treatment system per the attached SOW and 2017 ROD Amendment, with the exception of the activities required under Section XX (Retention of Records).

## V. GENERAL PROVISIONS

5. **Objectives of the Parties.** The objectives of the Parties in entering into this CD are to protect public health or welfare or the environment by the design and implementation of response actions at the Site by Performing SDs, to pay response costs of Plaintiffs, and to resolve the claims of Plaintiffs against SDs as provided in this CD.

### 6. Commitments by Performing SDs

a. Performing SDs shall finance and perform the Work in accordance with this CD and all deliverables developed by SDs and approved or modified by EPA pursuant to this CD. Performing SDs shall pay the United States for its response costs as provided in this CD.

b. Performing SDs’ obligations to finance and perform the Work, including obligations to pay amounts due under this CD, are joint and several. In the event of the insolvency of any Performing SD or the failure by any Performing SD to implement any requirement of this CD, the remaining Performing SDs shall complete all such requirements.

7. **Compliance with Applicable Law.** Nothing in this CD limits SDs’ obligations to comply with the requirements of all applicable federal and state laws and regulations. SDs must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the 2017 ROD Amendment and the SOW. The activities conducted pursuant to this CD, if approved by EPA, shall be deemed to be consistent with the NCP as provided in Section 300.700(c)(3)(ii) of the NCP.

### 8. Permits

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Performing

SDs shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Performing SDs may seek relief under the provisions of Section XIII (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 8.a and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

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

## **VI. PERFORMANCE OF THE WORK**

### **9. Coordination and Supervision**

#### **a. Project Coordinators**

(1) Performing SDs' Project Coordinator must have sufficient technical expertise to coordinate the Work. Performing SDs' Project Coordinator may not be an attorney representing any Performing SD in this matter and may not act as the Supervising Contractor. Performing SDs' Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.

(2) EPA shall designate and notify the Performing SDs of EPA's Project Coordinators and Alternate Project Coordinators. EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's Project Coordinator/Alternate Project Coordinator will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at the Site constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

(3) The State shall designate and notify EPA and the Performing SDs of its Project Coordinators and Alternate Project Coordinators. The State may designate other representatives, including its employees, contractors and/or consultants to oversee the Work. For any meetings and inspections in which EPA's Project Coordinator participates, the State's Project Coordinator also may participate. Performing SDs shall notify the State reasonably in advance of any such meetings or inspections.

(4) Performing SDs' Project Coordinators shall meet periodically with EPA's and the State's Project Coordinators, but shall not be required to meet more frequently than monthly.

b. **Supervising Contractor.** Performing SDs' proposed Supervising Contractor must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with ANSI/ASQC E4-2004, Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use (American National Standard).

c. **Procedures for Disapproval/Notice to Proceed**

(1) Performing SDs shall designate, and notify EPA, within 10 days after the Effective Date, of the name[s], title[s], contact information, and qualifications of the Performing SDs' proposed Project Coordinator and Supervising Contractor, whose qualifications shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and do not have a conflict of interest with respect to the project.

(2) EPA, after a reasonable opportunity for review and comment by the State, shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator and Supervising Contractor, as applicable. If EPA issues a notice of disapproval, the notice shall contain an explanation of EPA's rationale for disapproving the proposed Project Coordinator and/or Supervising Contractor, following which Performing SDs shall, within 30 days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. Performing SDs may select any coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify EPA of Performing SDs' selection. EPA may disapprove a previously approved Project Coordinator or Supervisory Contractor at any time. In such event, Performing SDs shall submit a list of proposed replacements in accordance with this Paragraph.

(3) Performing SDs may change their Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of ¶¶ 9(a)(1) and 9(c)(1).

(4) Notwithstanding the procedures of ¶¶ 9(a)(1) and 9(c)(1), Performing SDs have proposed, and EPA has authorized Performing SDs to proceed, regarding the following Project Coordinator: Douglas Sutton, HydroGeoLogic, Inc., 11107 Sunset Hills Rd. Ste. 400, Reston, VA 20190; (703) 478-5186 (Office); and (732) 233-1161 (Mobile) (preferred); dsutton@hgl.com; and the following Supervising Contractor: Theresa A. Miller, PG, LSP, Golder Associates USA Inc., 200 Century Parkway, Suite C, Mt. Laurel, NJ 08054; (978) 376-8434; tmiller@golder.com.

10. **Performance of Work in Accordance with SOW.** Performing SDs shall: (a) perform, or assure the performance of, the RA; and (b) operate, maintain, and monitor the effectiveness of the RA. All of the Work shall be conducted in accordance with the SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All

deliverables required to be submitted for approval under the CD or SOW shall be subject to approval by EPA in accordance with ¶ 5.6 (Approval of Deliverables) of the SOW.

11. **Emergencies and Releases.** Performing SDs shall comply with the emergency and release response and reporting requirements under ¶ 3.4 (Emergency Response and Reporting) of the SOW. Subject to Section XVI (Covenants by Plaintiff[s]), nothing in this CD, including ¶ 3.4 of the SOW, limits any authority of Plaintiff[s]: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site. If, due to Performing SDs' failure to take appropriate response action under ¶ 3.4 of the SOW, EPA or, as appropriate, the State takes such action instead, Performing SDs shall reimburse EPA and the State under Section X (Payments for Response Costs) for all costs of the response action.

12. **Community Involvement.** If requested by EPA, Performing SDs shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, Section 2 (Community Involvement) of the SOW. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator and implementation of a technical assistance plan. Costs incurred by the United States under this Section constitute Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

13. **Modification of SOW or Related Deliverables**

a. If EPA determines that it is necessary to modify the work specified in the SOW and/or in deliverables developed under the SOW in order to achieve and/or maintain the Performance Standards or to carry out and maintain the effectiveness of the RA, and such modification is consistent with the Scope of the Remedy set forth in ¶ 1.3 of the SOW, then EPA may notify Performing SDs of such modification. If Performing SDs object to the modification they may, within 30 days after EPA's notification, seek dispute resolution under Section XIV.

b. The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if Performing SDs invoke dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this CD, and Performing SDs shall implement all work required by such modification. Performing SDs shall incorporate the modification into the deliverable required under the SOW, as appropriate.

c. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this CD.

14. Nothing in this CD, the SOW, or any deliverable required under the SOW constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the SOW or related deliverable will achieve the Performance Standards.

## VII. REMEDY REVIEW

15. **Periodic Review.** Performing SDs shall conduct, in accordance with ¶ 3.9 (Periodic Review Support Plan) of the SOW, studies and investigations to support EPA's reviews of whether the RA is protective of human health and the environment (which reviews shall be included as part of overseeing implementation of the Work) under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and applicable regulations,

16. **EPA Selection of Further Response Actions.** If EPA determines, at any time, that the RA is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

17. **Opportunity to Comment.** Performing SDs and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. § 9613(k)(2) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

18. **Performing SDs' Obligation to Perform Further Response Actions.** If EPA selects further response actions relating to the Site, EPA may require Performing SDs to perform such further response actions, but only to the extent that the reopener conditions in ¶ 74 or 75 (Plaintiffs' Pre- and Post-Certification Reservations) are satisfied. Performing SDs may invoke the procedures set forth in Section XIV (Dispute Resolution) to dispute (a) EPA's determination that the reopener conditions of ¶ 74 or 75 are satisfied, (b) EPA's determination that the RA is not protective of human health and the environment, or (c) EPA's selection of the further response actions. Disputes regarding EPA's determination that the RA is not protective or EPA's selection of further response actions shall be resolved pursuant to ¶ 59 (Record Review).

19. **Submission of Plans.** If Performing SDs are required to perform further response actions pursuant to ¶ 18, they shall submit a plan for such response action to EPA for approval in accordance with the procedures of Section VI (Performance of the Work). Performing SDs shall implement the approved plan in accordance with this CD.

## VIII. PROPERTY REQUIREMENTS

20. **Agreements Regarding Access and Non-Interference.** Performing SDs shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by Performing SDs and by Plaintiffs, providing that such Non-Settling Owner, and Owner SD shall, with respect to Owner SD's Affected Property: (i) provide Plaintiffs and the Performing SDs, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the CD, including those listed in ¶ 20.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action, including the restrictions listed in ¶ 20.b (Land, Water, or Other Resource Use Restrictions). Performing SDs shall provide a copy of such access and use restriction agreement(s) to EPA and the State. With respect to this paragraph, the parties acknowledge that Mr. Vincent

Dell'Aversano is subject to the following settlement agreement and notice: 1) United States v. Vincent Dell'Aversano, Civil Action No.17-cv-1342-JEJ (entered 2019) and a related "Notice of Institutional Controls, Access, and Obligations Regarding Successors-in-Interest" regarding Mr. Dell'Aversano's property at 230 Grantham Lane, identified legally as Parcel No. 1003500006, and recorded on 2/12/2020 in the New Castle County Recorder of Deeds office.

a. **Access Requirements.** The following is a list of activities for which access is required regarding the Affected Property:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or the State;
- (3) Conducting investigations regarding contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in the SOW;
- (7) Implementing the Work pursuant to the conditions set forth in ¶ 78 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Performing SDs or their agents, consistent with Section XIX (Access to Information);
- (9) Assessing Performing SDs' compliance with the CD;
- (10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the CD; and
- (11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls.

b. **Land, Water, or Other Resource Use Restrictions.** The following is a list of land, water, or other resource use restrictions applicable to the Affected Property:

- (1) Prohibiting activities that could damage or compromise the effectiveness of the landfill caps and perimeter fences, result in exposure to contaminants in subsurface soils and waste materials, or interfere with the implementation or monitoring of groundwater response actions at the Site;

(2) Prohibiting installation of drinking water wells;

(3) Ensuring that any new structures to be occupied on the Site or, if determined to be necessary by EPA and the State based on future sampling, within 150 feet of the Inert Area or the Grantham South Area, will be constructed in the following manner that will minimize potential risk of inhalation of contaminants: At a minimum, a foundation vapor barrier and subsurface piping for a sub-slab depressurization system (“SSDS”) will be installed beneath any such structures potentially impacted by landfill gas from the Site, and the structures will be subjected to indoor air testing prior to building occupancy; should indoor air concentrations equal or exceed EPA risk-based criteria, the SSDS will be activated and operated until EPA determines that landfill gas migration no longer poses a vapor intrusion risk.

21. **Proprietary Controls.** Performing SDs shall, with respect to any Non-Settling Owner’s Affected Property, use best efforts to secure Non-Settling Owner’s cooperation in executing and recording; and Owner SD shall, with respect to Owner SD’s Affected Property, execute and record, in accordance with the procedures of this ¶ 21, Proprietary Controls that: (i) grant a right of access to conduct any activity regarding the CD, including those activities listed in ¶ 20.a (Access Requirements); and (ii) grant the right to enforce the land, water, or other resource use restrictions set forth in ¶ 20.b (Land, Water, or Other Resource Use Restrictions).

a. **Grantees.** The Proprietary Controls must be granted to one or more of the following persons and their representatives, as determined by EPA: the United States, the State, Performing SDs, and other appropriate grantees. Proprietary Controls in the nature of a Uniform Environmental Covenants Act (“UECA”) document granted to persons other than the United States must include a designation that EPA (and/or the State as appropriate) is a “third-party beneficiary” expressly granted the right of access and the right to enforce the covenants allowing EPA and/or the State to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.

b. **Initial Title Evidence.** Performing SDs shall, within 45 days after the Effective Date:

(1) **Record Title Evidence.** Submit to EPA a title insurance commitment or other title evidence acceptable to EPA that: (i) names the proposed insured or the party in whose favor the title evidence runs, or the party who will hold the real estate interest, or if that party is uncertain, names the United States, the State, the Performing SDs, or “To Be Determined;” (ii) covers the Affected Property that is to be encumbered; (iii) demonstrates that the person or entity that will execute and record the Proprietary Controls is the owner of such Affected Property; (iv) identifies all record matters that affect title to the Affected Property, including all prior liens, claims, rights (such as easements), mortgages, and other encumbrances (collectively, “Prior Encumbrances”); and (v) includes complete, legible copies of such Prior Encumbrances; and

(2) **Non-Record Title Evidence.** Submit to EPA a report of the results of an investigation, including a physical inspection of the Affected Property,

which identifies non-record matters that could affect the title, such as unrecorded leases or encroachments.

**c. Release or Subordination of Prior Liens, Claims, and Encumbrances**

(1) Performing SDs shall use their best efforts to secure the release, subordination, modification, or relocation of all Prior Encumbrances on the title to the Affected Property revealed by the title evidence or otherwise known to any Performing SD, unless EPA waives this requirement as provided under ¶¶ 21.c.(2)-(4).

(2) Performing SDs may, by the deadline under ¶ 21.b (Initial Title Evidence), submit an initial request for waiver of the requirements of ¶ 21.c.(1) regarding one or more Prior Encumbrances, on the grounds that such Prior Encumbrances cannot defeat or adversely affect the rights to be granted by the Proprietary Controls and cannot interfere with the remedy or result in unacceptable exposure to Waste Material.

(3) Performing SDs may, within 90 days after the Effective Date, or if an initial waiver request has been filed, within 45 days after EPA's determination on the initial waiver request, submit a final request for a waiver of the requirements of ¶ 21.c.(1) regarding any particular Prior Encumbrance on the grounds that Performing SDs could not obtain the release, subordination, modification, or relocation of such Prior Encumbrance despite best efforts.

(4) The initial and final waiver requests must include supporting evidence including descriptions of and copies of the Prior Encumbrances and maps showing areas affected by the Prior Encumbrances. The final waiver request also must include evidence of efforts made to secure release, subordination, modification, or relocation of the Prior Encumbrances.

(5) Performing SDs shall complete their obligations under ¶ 21.c.(1) regarding all Prior Encumbrances: within 180 days after the Effective Date; or if an initial waiver request has been filed, within 135 days after EPA's determination on the initial waiver request; or if a final waiver request has been filed, within 90 days after EPA's determination on the final waiver request.

**d. Update to Title Evidence and Recording of Proprietary Controls**

(1) Performing SDs shall submit all draft Proprietary Controls and draft instruments addressing Prior Encumbrances to EPA for review and approval within 180 days after the Effective Date; or if an initial waiver request has been filed, within 135 days after EPA's determination on the initial waiver request; or if a final waiver request has been filed, within 90 days after EPA's determination on the final waiver request. The Proprietary Controls must be in substantially the form attached hereto as Appendix E.

(2) Upon EPA's approval of the proposed Proprietary Controls and instruments addressing Prior Encumbrances, Performing SDs shall, within 15

days, update the original title insurance commitment (or other evidence of title acceptable to EPA) under ¶ 21.b (Initial Title Evidence). If the updated title examination indicates that no liens, claims, rights, or encumbrances have been recorded since the effective date of the original commitment (or other title evidence), Performing SDs shall secure the immediate recordation of the Proprietary Controls and instruments addressing Prior Encumbrances in the appropriate land records. Otherwise, Performing SDs shall secure the release, subordination, modification, or relocation under ¶ 21.c.(1), or the waiver under ¶¶ 21.c.(2)-(4), regarding any newly-discovered liens, claims, rights, and encumbrances, prior to recording the Proprietary Controls and instruments addressing Prior Encumbrances.

(3) If Performing SDs submitted a title insurance commitment under ¶ 21.b.□o(1) (Record Title Evidence), then upon the recording of the Proprietary Controls and instruments addressing Prior Encumbrances, Performing SDs shall obtain a title insurance policy that: (i) is consistent with the original title insurance commitment; (ii) is for \$100,000 or other amount approved by EPA; (iii) is issued to the United States, SDs, or other person approved by EPA; and (iv) is issued on a current American Land Title Association (ALTA) form or other form approved by EPA.

(4) Performing SDs shall, within 30 days after recording the Proprietary Controls and instruments addressing Prior Encumbrances, or such other deadline approved by EPA, provide to the United States and to all grantees of the Proprietary Controls: (i) certified copies of the recorded Proprietary Controls and instruments addressing Prior Encumbrances showing the clerk's recording stamps; and (ii) the title insurance policy(ies) or other approved form of updated title evidence dated as of the date of recording of the Proprietary Controls and instruments.

e. Performing SDs shall monitor, maintain, enforce, and annually report on all Proprietary Controls required under this CD.

f. Owner SD shall not Transfer its Affected Property unless it has executed and recorded all Proprietary Controls and instruments addressing Prior Encumbrances regarding such Affected Property in accordance with this Paragraph.

22. **Best Efforts.** As used in this Section VIII, "best efforts" means the efforts that a reasonable person in the position of Performing SDs would use so as 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, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. If Performing SDs are unable to accomplish what is required through "best efforts" in a timely manner, they shall notify the United States EPA, and include a description of the steps taken to comply with the requirements. If the United States deems it appropriate, it may assist Performing SDs, or take independent action, in obtaining such access and/or use restrictions, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the

Affected Property, as applicable. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

23. If EPA determines in a decision document prepared in accordance with the NCP that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Performing SDs shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such Institutional Controls.

**24. Notice to Successors-in-Title**

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

b. Owner SD shall, prior to entering into a contract to Transfer Owner SD's Affected Property, or 60 days prior to Transferring Owner SD's Affected 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 requiring implementation of such remedy, and that the United States District Court has entered the CD (identifying the name and civil action number of this case and the date the CD was entered by the Court); and

(2) Notify EPA and the State of the name and address of the proposed transferee and provide EPA and the State with a copy of the notice that it provided to the proposed transferee.

25. In the event of any Transfer of the Affected Property, unless the United States otherwise consents in writing, Performing SDs shall continue to comply with their obligations under the CD, including their obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property, and to implement, maintain, monitor, and report on Institutional Controls.

26. Notwithstanding any provision of the CD, Plaintiffs 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, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

## IX. FINANCIAL ASSURANCE

27. In order to ensure completion of the Work, Performing SDs shall secure financial assurance, initially in the amount of \$44.6 million (“Estimated Cost of the Work”), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the “Financial Assurance - Settlements” category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Performing SDs may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, and/or trust funds.

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

b. An irrevocable letter of credit, payable to 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 demonstration by a Performing SD that it meets the relevant test criteria of ¶ 29 accompanied by a standby funding commitment, which obligates the affected Performing SD 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

e. 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 Performing SD or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with a Performing SD; and (2) can demonstrate to EPA’s satisfaction that it meets the financial test criteria of ¶ 29.

28. Performing SDs shall, within 30 days of the Effective Date, obtain EPA’s approval of the form of Performing SDs’ financial assurance. Within 30 days of such approval, Performing SDs shall secure all executed and/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 following person:

Paul Leonard, Director (3SD00)  
Superfund & Emergency Management Division  
4 Penn Center, Philadelphia, PA 19103

and provide copies to the United States and to EPA and the State as specified in Section XXI (Notices and Submissions).

29. Performing SDs seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 27.d or 27.e, must, within 30 days of the Effective Date:

a. Demonstrate that:

- (1) the affected Performing SD 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 Performing SD 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 for the affected Performing SD 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 or 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/>.

30. Performing SDs providing financial assurance by means of a demonstration or guarantee under ¶ 27.d or 27.e. must also:

a. Annually resubmit the documents described in ¶ b within 90 days after the close of the affected Performing SD's or guarantor's fiscal year;

b. Notify EPA within 30 days after the affected SD 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 Performing SD or guarantor in addition to those specified in ¶ b; EPA may make such a request at any time based on a belief that the affected Performing SD or guarantor may no longer meet the financial test requirements of this Section.

31. Performing SDs shall diligently monitor the adequacy of the financial assurance. If any Performing SD 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 Performing SD shall notify EPA of such information within 7 days. If EPA determines 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 Performing SD of such determination. Performing SDs shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval 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 Performing SD, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Performing SDs shall follow the procedures of ¶ 33 (Modification of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Performing SDs' inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

**32. Access to Financial Assurance**

a. If EPA issues a notice of implementation of a Work Takeover under ¶ 78.b, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with ¶ 32.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and the affected Performing SD 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 ¶ 32.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under ¶ 78.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism and/or 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 ¶ 27.d or 27.e, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Performing SDs shall, within 30 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 32 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA, the State, 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 Federal Deposit Insurance Corporation (“FDIC”), in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Delaware Sand and Gravel 0345 Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this ¶ 32 must be reimbursed as Future Response Costs under Section X (Payments for Response Costs).

f. Access to Financial Assurance (Non-Work Takeover) – In the event of the insolvency of any Performing SD, and in the absence of a partial and/or complete Work Takeover by EPA, in accordance with the applicable financial assurance mechanism, EPA shall require that the financial assurance posted by such insolvent Performing SD be drawn and deposited into a Special Account to be established within the Superfund Hazardous Substances Superfund Trust Fund (hereinafter referred to as the “DS&G Financial Assurance Special Account”). In order to facilitate completion of the Work by the remaining Performing SDs, within 30 days of payment of such funds into the DS&G Financial Assurance Special Account, EPA will arrange to disburse the funds so deposited into the DS&G Financial Assurance Special Account to be paid to:

Delaware Sand & Gravel Remediation Trust  
Account No. 064217-000  
c/o David Young  
Corporate Financial Services Department  
Wilmington Trust Company  
1100 North Market St.  
Rodney Square North  
Wilmington, DE 19890-0001

At the same time, the remaining Performing SDs shall increase the amount of their financial assurance under Paragraph 27 as necessary to satisfy their financial assurance obligations under Section IX (“Financial Assurance”) based upon the estimated cost of the Work remaining at the time.

33. **Modification of Amount, Form, or Terms of Financial Assurance.** Performing SDs may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA and the State in accordance with ¶ 28, 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 Performing SDs of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Performing SDs may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIV (Dispute Resolution). Performing SDs may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Performing SDs pursuant to the dispute resolution provisions of this CD or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Performing SDs shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with ¶ 28.

34. **Release, Cancellation, or Discontinuation of Financial Assurance.** Performing SDs may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Certification of Work Completion under ¶ 3.10 (Certification of Work Completion) of the SOW; (b) in accordance with EPA's approval 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 XIV (Dispute Resolution).

## X. PAYMENTS FOR RESPONSE COSTS

35. **Orphan Share Compensation.** EPA has determined that the Performing SDs are entitled to Orphan Share compensation as that term is defined in EPA's 6/04/96 *Interim Guidance on Orphan Share Compensation for Settlers of Remedial Design/Remedial Action and Non-Time-Critical Removals*, in the amount equal to EPA's unreimbursed Past Response Costs incurred at the Site (\$987,412.62) plus a portion of EPA's anticipated Future Oversight Costs to be incurred at the Site (\$800,000) consistent with paragraph 36, below.

36. **Payments by Performing SDs for Future Response Costs.** Performing SDs shall pay to EPA all Future Response Costs not inconsistent with the NCP, with the exception of the first \$800,000, which shall be credited to Performing SDs per the Orphan Share compensation identified in ¶ 35, above.

a. **Periodic Bills.** On a periodic basis, and after any credit in this ¶ 36 has been applied, EPA will send Performing SDs a bill requiring payment that includes a summary of costs which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, State costs incurred under a cooperative agreement with EPA, and costs incurred by DOJ.

Performing SDs shall make all payments within 30 days after SDs' receipt of each bill requiring payment, except as otherwise provided in ¶ 38, in accordance with ¶ 37 (Payment Instructions for Performing SDs).

b. **Deposit of Future Response Costs Payments.** The total amount to be paid by Performing SDs pursuant to ¶ 36.a (Periodic Bills) shall be deposited by EPA in the **Delaware Sand and Gravel 0345 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 EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Delaware Sand and Gravel 0345 Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Performing SDs pursuant to the dispute resolution provisions of this CD or in any other forum.

**37. Payment Instructions for Performing SDs.**

a. **Future Response Costs Payments and Stipulated Penalties.** For all payments subject to this ¶ 37.a, Performing SDs shall make such payment by Fedwire EFT to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
Field Tag 4200: D 68010727 Environmental Protection Agency

b. For each payment made under ¶ 37.a, Performing SDs shall send notices, including references to Site/Spill ID 0345 and DJ Number 90-11-2-298, to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with ¶ 99. Notice of payment shall also be provided to the EPA Region III Hearing Clerk via the following email address: [R3\\_HearingClerk@epa.gov](mailto:R3_HearingClerk@epa.gov).

**38. Contesting Future Response Costs.** Performing SDs may submit a Notice of Dispute, initiating the procedures of Section XIV (Dispute Resolution), regarding any Future Response Costs billed under ¶ 36 (Payments by Performing SDs for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs or State Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such Notice of Dispute shall be submitted in writing within 30 days after receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) pursuant to Section XXI (Notices and Submissions). Such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Performing SDs submit a Notice of Dispute, Performing SDs shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to the United States, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the FDIC, and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Performing SDs shall

send to the United States, as provided in Section XXI (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If the United States prevails in the dispute, Performing SDs shall pay the sums due (with accrued interest) to the United States within 7 days after the resolution of the dispute. If Performing SDs prevail concerning any aspect of the contested costs, Performing SDs shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States within 7 days after the resolution of the dispute. Performing SDs shall be disbursed any balance of the escrow account. All payments to the United States under this Paragraph shall be made in accordance with ¶ 37 (Payment Instructions for Performing SDs). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Performing SDs' obligation to reimburse the United States for its Future Response Costs.

39. Performing SDs may contest the final accounting of the Disbursement Delaware Sand and Gravel Special Account issued under ¶ 36.a (Periodic Bills) if they determine that the United States has made a mathematical error. Such objection shall be made in writing within 30 days after receipt of the final accounting and must be sent to the United States pursuant to Section XXI (Notices and Submissions). Any such objection shall specifically identify the alleged final mathematical error and the basis for objection. EPA will review the alleged mathematical error and either affirm the initial accounting or issue a corrected final accounting within 90 days. If Performing SDs disagree with EPA's decision, Performing SDs may, within 7 days after receipt of the decision, appeal the decision to the Director of the Superfund & Emergency Management Division, EPA Region 3. The Director of the Superfund & Emergency Management Division will issue a final administrative decision resolving the dispute, which shall be binding upon Performing SDs and shall not be subject to challenge by Performing SDs pursuant to the dispute resolution provisions of this CD or in any other forum.

40. **Interest.** In the event that any payment for Future Response Costs required under this Section is not made by the date required, Performing SDs shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Performing SDs' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Performing SDs' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Section XV (Stipulated Penalties).

## **XI. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS**

41. **Creation of Disbursement Delaware Sand and Gravel Special Account and Agreement to Disburse Funds to Performing SDs.** Within 30 days after the Effective Date, EPA shall establish the Disbursement Delaware Sand and Gravel Special Account and shall transfer \$4,375,000 from the Delaware Sand and Gravel 0345 Special Account to the Disbursement Delaware Sand and Gravel Special Account. Subject to the terms and conditions

set forth in this Section, EPA agrees to make the funds in the Disbursement Delaware Sand and Gravel Special Account, including Interest Earned on the funds in the Disbursement Delaware Sand and Gravel Special Account, available for disbursement to Performing SDs as partial reimbursement for performance of the Work. EPA shall disburse funds from the Disbursement Delaware Sand and Gravel Special Account to Performing SDs in accordance with the procedures and milestones for phased disbursement set forth in this Section.

**42. Timing, Amount, and Method of Disbursing Funds From the Disbursement Delaware Sand and Gravel Special Account.** Within 90 days after EPA's receipt of a Cost Summary and Certification, as defined by ¶ 43.b, or if EPA has requested additional information under ¶ 43.b or a revised Cost Summary and Certification under ¶ 43.c, within 90 days after receipt of the additional information or revised Cost Summary and Certification, and subject to the conditions set forth in this Section, EPA shall disburse the funds from the Disbursement Delaware Sand and Gravel Special Account at the completion of the following milestones, and in the amounts set forth below:

Milestone	Disbursement of Funds
1. EPA approval of the RA Work Plan for RA-1	Up to 20% of the funds then remaining in the Disbursement Delaware Sand and Gravel Special Account
2. EPA approval of the RA Work Plan for RA-2	Up to 20% of the funds then remaining in the Disbursement Delaware Sand and Gravel Special Account
3. EPA approval of Final Inspection of RA-1	Up to 15% of the funds then remaining in the Disbursement Delaware Sand and Gravel Special Account
4. EPA approval of Final Inspection of RA-2	Up to 15% of the funds then remaining in the Disbursement Delaware Sand and Gravel Special Account
5. EPA notifications that (a) RA-1 Construction is complete, pursuant to ¶ 3.6 (RA Construction Completion) of the SOW; and (b) RA-2 Construction is complete, pursuant to ¶ 3.6 (RA Construction Completion) of the SOW	(a) Up to 15% of the funds then remaining in the Disbursement Delaware Sand and Gravel Special Account upon the first notification of RA-1 or RA-2 Construction Completion; and (b) remainder of funds in the Disbursement Delaware Sand and Gravel Special Account upon the second notification.

EPA shall disburse the funds from the Disbursement Delaware Sand and Gravel Special Account to Performing SDs in the following manner:

Delaware Sand & Gravel Remediation Trust  
Account No. 064217-000

c/o David Young  
Corporate Financial Services Department  
Wilmington Trust Company  
1100 North Market St.  
Rodney Square North  
Wilmington, DE 19890-0001

**43. Requests for Disbursement of Special Account Funds**

a. Within 60 days after issuance of EPA's written confirmation that a milestone of the Work, as defined in ¶ 42 (Timing, Amount, and Method of Disbursing Funds), has been satisfactorily completed, Performing SDs shall submit to EPA a Cost Summary and Certification, as defined in ¶ 43.b, covering the Work performed up to the date of completion of that milestone. Performing SDs shall not include in any submission costs included in a previous Cost Summary and Certification following completion of an earlier milestone of the Work if those costs have been previously reimbursed pursuant to ¶ 42.

b. Each Cost Summary and Certification shall include a complete and accurate written cost summary and certification of the necessary costs incurred and paid by Performing SDs for the Work covered by the particular submission, excluding costs not eligible for disbursement under ¶ 44 (Costs Excluded from Disbursement). Each Cost Summary and Certification shall contain the following statement signed by the Chief Financial Officer of a Performing SD or an Independent Certified Public Accountant:

To the best of my knowledge, after thorough investigation and review of Performing SDs' documentation of costs incurred and paid for Work performed pursuant to this CD up to the date of completion of Milestone [**insert Milestone # from ¶ 42**], I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment.

The Chief Financial Officer of a Performing SD or Independent Certified Public Accountant shall also provide EPA a list of the documents that he or she reviewed in support of the Cost Summary and Certification. Upon request by EPA, Performing SDs shall submit to EPA any additional information that EPA deems necessary for its review and approval of a Cost Summary and Certification.

c. If EPA finds that a Cost Summary and Certification includes a mathematical error, costs excluded under ¶ 44 (Costs Excluded from Disbursement), costs that are inadequately documented, or costs submitted or reimbursed in a prior Cost Summary and Certification, it will notify Performing SDs and provide them an opportunity to cure the deficiency by submitting a revised Cost Summary and Certification. If Performing SDs fail to cure the deficiency within 30 days after being notified of, and given the opportunity to cure, the deficiency, EPA will recalculate Performing SDs' costs eligible for disbursement for that submission and disburse the corrected amount to Performing SDs in accordance with the procedures in ¶ 42 (Timing, Amount, and Method of Disbursing Funds). Performing SDs may dispute EPA's recalculation under this Paragraph pursuant to Section XIV (Dispute Resolution). In no event shall Performing SDs be disbursed funds from the Disbursement Delaware Sand and

Gravel Special Account in excess of amounts properly documented in a Cost Summary and Certification accepted or modified by EPA.

44. **Costs Excluded from Disbursement.** The following costs are excluded from, and shall not be sought by Performing SDs for, disbursement from the Disbursement Delaware Sand and Gravel Special Account: (a) response costs paid pursuant to Section X (Payments for Response Costs); (b) any other payments made by Performing SDs to the United States pursuant to this CD, including, but not limited to, any Interest or stipulated penalties paid pursuant to Section X (Payments for Response Costs) or XV (Stipulated Penalties); (c) attorneys' fees and costs, except for reasonable attorneys' fees and costs necessarily related to securing access and implementing Institutional Controls as required by Section IX (Access and Institutional Controls as required by Section VIII (Property Requirements)); (d) costs of any response activities Performing SDs perform that are not required under, or approved by EPA pursuant to, this CD; (e) costs related to Performing SDs' litigation, settlement, development of potential contribution claims, or identification of defendants; (f) internal costs of Performing SDs, including but not limited to, salaries, travel, or in-kind services, except for those costs that represent the work of employees of SDs directly performing the Work; (g) any costs incurred by Performing SDs prior to the Effective Date except for approved Work completed pursuant to this CD and/or the RD AOC; or (h) any costs incurred by SDs pursuant to Section XIV (Dispute Resolution).

45. **Termination of Disbursements from the Special Account.** EPA's obligation to disburse funds from the Disbursement Special Delaware Sand and Gravel Account under this CD shall terminate upon EPA's determination that Performing SDs: (a) have knowingly submitted a materially false or misleading Cost Summary and Certification; (b) have submitted a materially inaccurate or incomplete Cost Summary and Certification, and have failed to correct the materially inaccurate or incomplete Cost Summary and Certification within 30 days after being notified of, and given the opportunity to cure, the deficiency; or (c) failed to submit a Cost Summary and Certification as required by ¶ 43 (Requests for Disbursement of Special Account Funds) within 60 days (or such longer period as EPA agrees) after being notified that EPA intends to terminate its obligation to make disbursements pursuant to this Section because of Performing SDs' failure to submit the Cost Summary and Certification as required by ¶ 43. EPA's obligation to disburse funds from the Disbursement Delaware Sand and Gravel Special Account shall also terminate upon EPA's assumption of performance of any portion of the Work pursuant to ¶ 78 (Work Takeover), when such assumption of performance of the Work is not challenged by Performing SDs or, if challenged, is upheld under Section XIV (Dispute Resolution). Performing SDs may dispute EPA's termination of special account disbursements under Section XIV.

46. **Recapture of Special Account Disbursements.** Upon termination of disbursements from the Disbursement Special Delaware Sand & Gravel Account under ¶ 45 (Termination of Disbursements from the Special Account), if EPA has previously disbursed funds from the Disbursement Delaware Sand and Gravel Special Account for activities specifically related to the reason for termination, e.g., discovery of a materially false or misleading submission after disbursement of funds based on that submission, EPA shall submit a bill to Performing SDs for those amounts already disbursed from the Disbursement Delaware Sand and Gravel Special Account specifically related to the reason for termination, plus Interest on that amount covering the period from the date of disbursement of the funds by EPA to the

date of repayment of the funds by Performing SDs. Within 60 days after receipt of EPA's bill, Performing SDs shall reimburse the EPA Hazardous Substance Superfund for the total amount billed. Payment shall be made in accordance with ¶ 37.a (instructions for future response cost payments). Upon receipt of payment, EPA may deposit all or any portion thereof in the Delaware Sand and Gravel 0345 Special Account, the Disbursement Delaware Sand and Gravel Special Account, or the EPA Hazardous Substance Superfund. The determination of where to deposit or how to use the funds shall not be subject to challenge by Performing SDs pursuant to the dispute resolution provisions of this CD or in any other forum. Performing SDs may dispute EPA's determination as to recapture of funds pursuant to Section XIV (Dispute Resolution).

47. **Balance of Special Account Funds.** After EPA notifies Performing SDs that RA Construction is complete, and after EPA completes all disbursement to Performing SDs in accordance with this Section, if any funds remain in the Disbursement Delaware Sand and Gravel Special Account, EPA may transfer such funds to the Delaware Sand and Gravel 0345 Special Account or to the EPA Hazardous Substance Superfund. Any transfer of funds to the Delaware Sand and Gravel 0345 Special Account or the EPA Hazardous Substance Superfund shall not be subject to challenge by Performing SDs pursuant to the dispute resolution provisions of this CD or in any other forum.

## **XII. INDEMNIFICATION AND INSURANCE**

### **48. Performing SDs' Indemnification of the United States and the State**

a. The United States and the State do not assume any liability by entering into this CD or by virtue of any designation of Performing SDs as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Performing SDs shall indemnify, save, and hold harmless the United States and the State and their officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Performing SDs, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Performing SDs' behalf or under their control, in carrying out activities pursuant to this CD, including, but not limited to, any claims arising from any designation of Performing SDs as EPA's authorized representatives under Section 104(e) of CERCLA. Further, Performing SDs agree to pay the United States and the State all costs they incur including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States and the State based on negligent or other wrongful acts or omissions of Performing SDs, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this CD. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Performing SDs in carrying out activities pursuant to this CD. Neither Performing SDs nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State, respectively, shall give Performing SDs notice of any claim for which the United States or the State plans to seek indemnification pursuant to this ¶ 48, and shall consult with Performing SDs prior to settling such claim.

49. Performing SDs covenant not to sue and agree not to assert any claims or causes of action against the United States and the State, respectively, for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between any one or more of Performing SDs and any person for performance of work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Performing SDs shall indemnify, save and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Performing SDs and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

50. **Insurance.** No later than 15 days before commencing any on-site Work, Performing SDs shall secure, and shall maintain until the first anniversary after issuance of EPA's Certification of RA Completion pursuant to ¶ 3.8 (Certification of RA Completion) of the SOW, commercial general liability insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming the United States and the State as additional insureds with respect to all liability arising out of the activities performed by or on behalf of Performing SDs pursuant to this CD. In addition, for the duration of this CD, Performing SDs shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Performing SDs in furtherance of this CD. Under no circumstances shall the State be identified as or made a named insured on any policy of insurance that may be obtained pursuant to the terms of this paragraph. Prior to commencement of the Work, Performing SDs shall provide to EPA and the State certificates of such insurance and, if requested, a copy of each insurance policy (as to which Performing SDs may assert a Confidential Business Information claim). Performing SDs shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Performing SDs demonstrate by evidence satisfactory to EPA and the State that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Performing SDs need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Performing SDs shall ensure that all submittals to EPA under this Paragraph identify the Delaware Sand & Gravel Landfill Superfund Site, New Castle County, Delaware and the civil action number of this case.

### **XIII. FORCE MAJEURE**

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

52. If any event occurs or has occurred that may delay the performance of any obligation under this CD for which Performing SDs intend or may intend to assert a claim of force majeure, Performing SDs shall notify EPA’s Project Coordinator orally or, in his or her absence, EPA’s Alternate Project Coordinator or, in the event both of EPA’s designated representatives are unavailable, the Director of the Superfund & Emergency Management Division, EPA Region 3, within 48 hours of when Performing SDs first knew that the event might cause a delay. Within five (5) days thereafter, Performing SDs shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Performing SDs’ rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Performing SDs, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Performing SDs shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Performing SDs shall be deemed to know of any circumstance of which Performing SDs, any entity controlled by Performing SDs, or Performing SDs’ contractors or subcontractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Performing SDs from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 51 and whether Performing SDs have exercised their best efforts under ¶ 51, EPA may, in its unreviewable discretion, excuse in writing Performing SDs’ failure to submit timely or complete notices under this Paragraph.

53. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this CD that are affected by the force majeure will be extended by EPA, after a reasonable opportunity for review and comment by the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Performing SDs in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay is attributable to a force majeure, EPA will notify Performing SDs in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

54. If Performing SDs elect to invoke the dispute resolution procedures set forth in Section XIV (Dispute Resolution) regarding EPA’s decision, they shall do so no later than 15 days after receipt of EPA’s notice. In any such proceeding, Performing SDs shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Performing SDs complied with the

requirements of ¶¶ 51 and 52. If Performing SDs carry this burden, the delay at issue shall be deemed not to be a violation by Performing SDs of the affected obligation of this CD identified to EPA and the Court.

55. The failure by EPA to timely complete any obligation under the CD or under the SOW is not a violation of the CD, provided, however, that if such failure prevents Performing SDs from meeting one or more deadlines in the CD or the SOW, Performing SDs may seek relief under this Section.

#### **XIV. DISPUTE RESOLUTION**

56. Unless otherwise expressly provided for in this CD, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes under this CD. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Performing SDs that have not been disputed in accordance with this Section.

57. A dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. Any dispute regarding this CD shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 30 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute.

##### **58. Statements of Position**

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 20 days after the conclusion of the informal negotiation period, Performing SDs invoke the formal dispute resolution procedures of this Section by serving on the United States and the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Performing SDs. The Statement of Position shall specify Performing SDs' position as to whether formal dispute resolution should proceed under ¶ 59 (Record Review) or ¶ 60.

b. Within 14 days after receipt of Performing SDs' Statement of Position, EPA will serve on Performing SDs its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under ¶ 59 (Record Review) or ¶ 60. Within 7 days after receipt of EPA's Statement of Position, Performing SDs may submit a Reply.

c. If there is disagreement between EPA and Performing SDs as to whether dispute resolution should proceed under ¶ 59 (Record Review) or ¶ 60, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if Performing SDs ultimately appeal to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in ¶¶ 59 and 60.

59. **Record Review.** Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this CD, and the adequacy of the performance of response actions taken pursuant to this CD. Performing SDs shall not challenge, using the dispute resolution procedures under this Section XIV, or judicially, EPA's remedial action selection embodied in the 2017 ROD Amendment.

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

b. The Director of the Superfund & Emergency Management Division, EPA Region 3, will issue a final administrative decision resolving the dispute based on the administrative record described in ¶ 59.a. This decision shall be binding upon Performing SDs, subject only to the right to seek judicial review pursuant to ¶¶ 59.c and 59.d.

c. Any administrative decision made by EPA pursuant to ¶ 59.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Performing SDs with the Court and served on all Parties within 10 days after receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this CD. The United States may file a response to Performing SDs' motion.

d. In proceedings on any dispute governed by this Paragraph, Performing SDs shall have the burden of demonstrating that the decision of the Superfund & Emergency Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to ¶ 59.a.

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

a. The Director of the Superfund & Emergency Management Division, EPA Region 3, will issue a final decision resolving the dispute based on the statements of position and reply, if any, served under ¶ 58. The Superfund & Emergency Management Division Director's decision shall be binding on Performing SDs unless, within 10 days after receipt of the decision, Performing SDs file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the CD. The United States may file a response to Performing SDs' motion.

b. Notwithstanding ¶ S (CERCLA § 113(j) record review of ROD and Work) of Section I (Background), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

61. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Performing SDs under this CD, except as provided in ¶ 38 (Contesting Future Response Costs), as agreed by EPA, or as determined by the Court. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute, as provided in ¶ 68. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this CD. In the event that Performing SDs do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XV (Stipulated Penalties).

## **XV. STIPULATED PENALTIES**

62. Performing SDs shall be liable to the United States and the State on a 50%/50% basis for stipulated penalties in the amounts set forth in ¶¶ 63.a and 64 for failure to comply with the obligations specified in ¶¶ 63.b and 64, unless excused under Section XIII (Force Majeure). “Comply” as used in the previous sentence includes compliance by Performing SDs with all applicable requirements of this CD within the deadlines established under this CD. If an initially submitted or resubmitted deliverable contains a material defect, and the deliverable is disapproved or modified by EPA under ¶ 5.6(a) (Initial Submissions) or ¶ 5.6(b) (Resubmissions) of the SOW due to such material defect, then the material defect shall constitute a lack of compliance for purposes of this Paragraph.

### **63. Stipulated Penalty Amounts - Payments, Financial Assurance, Major Deliverables, and Other Milestones**

a. The following stipulated penalties shall accrue per violation per day for any noncompliance or failure to comply with the requirements of the requisite obligations identified in ¶ b:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$3,000
15th through 30th day	\$7,500
31st day and beyond	\$10,000

### **b. Obligations**

(1) Payment of any amount due under Section X (Payments for Response Costs);

(2) Establishment and maintenance of financial assurance in accordance with Section IX (Financial Assurance);

(3) Performance of studies and investigations to support EPA’s reviews under Paragraph 15;

- (4) Submission of plans for, and performance of, further response actions under Paragraph 18 and Paragraph 19;
- (5) Notification of delay requirements under Paragraph 52;
- (6) Timely payment of stipulated penalties demanded under Section XV;
- (7) Notification of suits or claims under Paragraph 88 and Paragraph 89;
- (8) Timely submission of the following deliverables in accordance with the schedules and requirements of the SOW, including resubmission following disapproval by EPA:
  - i. Remedial Action Work Plan;
  - ii. Remedial Action Report(s).
- (9) Timely implementation of actions in accordance with schedules set forth in EPA-approved deliverables described in Paragraph 19 above; and
- (10) Remedial Action deadlines set forth in Paragraph 6.2 of the SOW.

64. **Stipulated Penalty Amounts – Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to the CD, other than those obligations specified in Paragraph 63.b, above, including but not limited to the following deliverables:

- a. Establishment of escrow account to hold any disputed Future Response Costs under ¶ 38 (Contesting Future Response Costs).
- b. Timely designation of a Project Coordinator and Supervising Contractor, including replacements thereof, under Paragraph 9.
- c. Emergency and release response and reporting requirements under Paragraph 11.
- d. Community involvement activities required under Paragraph 12.
- e. Requirements regarding access and non-interference under Paragraph 20.
- f. Insurance requirements under Paragraph 50.
- g. Record retention and notice requirements under Section XX.
- h. Progress reports and supporting deliverables.
- i. Requirements regarding proprietary controls under ¶ 21 and use of best efforts under ¶ 22.

- j. Requirements to cooperate with efforts to secure and ensure compliance with institutional controls under ¶ 22.
- k. Requirements regarding notice to successors-in-title under ¶ 24.
- l. providing requested information and documents under ¶ 91.

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$ 750
15th through 30th day	\$1,250
31st day and beyond	\$2,000

65. In the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 78 (Work Takeover), Performing SDs shall be liable for a stipulated penalty in the amount of \$150,000. Stipulated penalties under this Paragraph are in addition to the remedies available under ¶¶ 32 (Access to Financial Assurance) and 78 (Work Takeover).

66. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under ¶ 5.6 (Approval of Deliverables) 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 Performing SDs of any deficiency; (b) with respect to a decision by the Director of the Superfund & Emergency Management Division, EPA Region 3, under ¶ 59.b or ¶ 60.a of Section XIV (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Performing SDs' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XIV (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this CD shall prevent the simultaneous accrual of separate penalties for separate violations of this CD.

67. Following EPA's determination that Performing SDs have failed to comply with a requirement of this CD, EPA may give Performing SDs written notification of the same and describe the noncompliance. EPA and the State may send Performing SDs a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Performing SDs of a violation.

a. Demand and Payment Process. All penalties accruing under this Section shall be due and payable to the United States and the State within 30 days after Performing SDs' receipt from EPA of a demand for payment of the penalties, unless Performing SDs invoke the Dispute Resolution procedures under Section XIV (Dispute Resolution) within the 30-day period. All payments to the United States under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with ¶ 37.a (instructions for future response cost payments) and this Paragraph.

- b. The United States shall send notice of the demand letter to:

the State in accordance with Section X (Notices).

c. Performing SDs shall send notices of payment to:

(1) EPA via email at [CINWD\\_Acctsreceivable@epa.gov](mailto:CINWD_Acctsreceivable@epa.gov);

(2) EPA via regular mail at U.S. EPA Cincinnati Finance Office, MS; WG-32B26 Martin Luther King Drive, Cincinnati, Ohio 45268;

(3) EPA via email to the U.S. EPA Regional Hearing Clerk at [R3\\_Hearing\\_Clerk@epa.gov](mailto:R3_Hearing_Clerk@epa.gov);

(4) the United States via email or regular mail in accordance with Section X (Notices); and

(5) the State in accordance with Section X (Notices).

Such notice shall state the paying party's name, street/P.O. Box address, email address and telephone number; the name of the case; the docket number or the civil action number of the case; the Consolidated Debt Collection System ("CDCS") Number and DOJ case number (if applicable); the amount of the payment; and the method of payment.

d. If Performing SDs dispute all or any portion of the demand for payment of stipulated penalties under Section XIV (Dispute Resolution) of this CD, Performing SDs shall send a copy of the Notice of Dispute as provided in subparagraph c, above.

e. Where the State is entitled to a portion of the stipulated penalties, the Performing SD(s) shall send payment as directed by ¶ 35.c.

68. Penalties shall continue to accrue as provided in ¶ 66 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the parties or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA and the State within 15 days after the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Performing SDs shall pay all accrued penalties determined by the Court to be owed to EPA and the State within 60 days after receipt of the Court's decision or order, except as provided in ¶ 68.c;

c. If the District Court's decision is appealed by any Party, Performing SDs shall pay all accrued penalties determined by the District Court to be owed to the United States and the State into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA and the State or to Performing SDs to the extent that they prevail.

69. If Performing SDs fail to pay stipulated penalties when due, Performing SDs shall pay Interest on the unpaid stipulated penalties as follows: (a) if Performing SDs have timely

invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to ¶ 68 until the date of payment; and (b) if Performing SDs fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under ¶ a until the date of payment. If Performing SDs fail to pay stipulated penalties and Interest when due, the United States or the State may institute proceedings to collect the penalties and Interest.

70. The payment of penalties and Interest, if any, shall not alter in any way Performing SDs' obligation to complete the performance of the Work required under this CD.

71. Nothing in this CD shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of Performing SDs' violation of this CD or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided in this CD, except in the case of a willful violation of this CD.

72. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CD.

## XVI. COVENANTS BY PLAINTIFFS

73. **Covenants for SDs by Plaintiffs.** Except as provided in ¶¶ 74, 75 (Plaintiffs' Pre- and Post-Certification Reservations), and 77 (General Reservations of Rights), the United States covenants not to sue or to take administrative action against SDs pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA relating to the Site. The State covenants not to sue or take administrative action against the SDs under Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), respectively, Section 7003 of RCRA, 42 U.S.C. § 6973, and 7 Del. C. § 6308 relating to the Site. Except with respect to future liability, these covenants shall take effect upon the Effective Date. With respect to future liability, these covenants shall take effect upon Certification of RA Completion by EPA pursuant to ¶ 4.7 (Certification of RA Completion) of the SOW. With respect to Performing SDs, these covenants are conditioned upon the satisfactory performance by Performing SDs of their obligations under this CD. The covenants for each Non-Performing SD are conditioned upon the satisfactory performance by that Non-Performing SD of its obligations under this CD. These covenants extend only to SDs and do not extend to any other person.

74. **Plaintiffs' Pre-Certification Reservations.** Notwithstanding any other provision of this CD, the Plaintiffs reserve, and this CD is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel Performing SDs to perform further response actions relating to the Site and/or to pay the Plaintiffs for additional costs of response if, (a) prior to Certification of RA Completion, (1) conditions at the Site, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the RA is not protective of human health or the environment.

75. **Plaintiffs' Post-Certification Reservations.** Notwithstanding any other provision of this CD, the Plaintiffs reserve, and this CD is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel Performing SDs to perform further response actions relating to the Site and/or to pay the Plaintiffs for additional costs of response if, (a) subsequent to Certification of RA Completion, (1) conditions at the Site, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the RA is not protective of human health or the environment.

76. For purposes of ¶ 74 (Plaintiffs' Pre-Certification Reservations), the information and the conditions known to EPA will include only that information and those conditions known to EPA as of the date of EPA's receipt of SD's Pre-Design Investigation Report – Revision 1 (2/23/2021). For purposes of ¶ 75 (Plaintiffs' Post-Certification Reservations), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of RA Completion and set forth in the 2017 ROD Amendment, the administrative record supporting the 2017 ROD Amendment, the post-2017 ROD Amendment administrative record, or in any information received by EPA or the State pursuant to the requirements of this CD prior to Certification of RA Completion.

77. **General Reservations of Rights.** The Plaintiffs reserve, and this CD is without prejudice to, all rights against SDs with respect to all matters not expressly included within Plaintiffs' covenants. Notwithstanding any other provision of this CD, the United States reserves all rights against SDs with respect to:

- a. liability for failure by SDs to meet a requirement of this CD;
- 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 the ownership of the Site by SDs when such ownership commences after signature of this CD by SDs;
- d. liability based on the operation of the Site by SDs when such operation commences after signature of this CD by SDs and does not arise solely from SDs' performance of the Work;
- e. liability based on SDs' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the 2017 ROD Amendment, the Work, or otherwise ordered by EPA, after signature of this CD by SDs;
- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- g. criminal liability;
- h. liability for violations of federal or State law that occur during or after implementation of the Work; and

i. liability, prior to achievement of Performance Standards, for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the 2017 ROD Amendment, but that cannot be required pursuant to ¶ 13 (Modification of SOW or Related Deliverables).

**78. Work Takeover**

a. In the event EPA determines that Performing SDs: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (“Work Takeover Notice”) to Performing SDs. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Performing SDs a period of 10 days within which to remedy the circumstances giving rise to EPA’s issuance of such notice.

b. If, after expiration of the 10-day notice period specified in ¶ 78.a, Performing SDs have not remedied to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (“Work Takeover”). EPA will notify Performing SDs in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this ¶ 78.b. Funding of Work Takeover costs is addressed under ¶ 32 (Access to Financial Assurance).

c. Performing SDs may invoke the procedures set forth in ¶ 59 (Record Review), to dispute EPA’s implementation of a Work Takeover under ¶ 78.b. However, notwithstanding Performing SDs’ invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under ¶ 78.b until the earlier of (1) the date that Performing SDs remedy, to EPA’s satisfaction, the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with ¶ 59 (Record Review) requiring EPA to terminate such Work Takeover.

79. Notwithstanding any other provision of this CD, the United States and the State retain all authority and reserve all rights to take any and all response actions authorized by law.

**XVII. COVENANTS BY SDs**

80. **Covenants by SDs.** Subject to the reservations in ¶ 82, SDs covenant not to sue and agree not to assert any claims or causes of action against the United States or the State with respect to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA §§ 106(b)(2), 107, 111, 112 or 113, or any other provision of law;

b. any claims under CERCLA §§ 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding: the Site Past Response Costs, Future Response

Costs, State Past Response Costs, State Future Response Costs, SDs' Past Response Costs, SDs' Future Response Costs, and this CD;

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

d. any direct or indirect claim for disbursement from the (1) Delaware Sand & Gravel Superfund Site 0345 Special Account or (2) Disbursement Delaware Sand and Gravel Special Account, except as provided in Section XI (Disbursement of Special Account Funds).

81. Except as provided in ¶¶ 84 (Waiver of Claims by SDs) and 90 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States or the State brings a cause of action or issues an order pursuant to any of the reservations in Section XVI (Covenants by Plaintiffs, other than in ¶¶ a (claims for failure to meet a requirement of the CD), g (criminal liability), and h (violations of federal/state law during or after implementation of the Work)), but only to the extent that SDs' claims arise from the same response action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

82. SDs reserve, and this CD is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of SDs' deliverables or activities.

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

#### 84. **Waiver of Claims by SDs**

a. SDs agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:

(1) **De Micromis Waiver.** For all matters relating to the Site against any person where the person's liability to SDs with respect to the Site is based solely on having arranged for disposal or treatment, transported for disposal or treatment, or having accepted for transport for disposal or treatment of hazardous substances 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 contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials;

(2) New Castle County. For all matters relating to the Site which are addressed or covered by the NCC 2019 Settlement Agreement.

**b. Exceptions to Waiver.**

(1) The waiver under this ¶ 84 shall not apply with respect to any defense, claim, or cause of action that a SD may have against any person otherwise covered by such waiver if such person asserts a claim or cause of action relating to the Site against such SD.

(2) The waiver under ¶ 84.a.(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver, if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or 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 if (iii) such person has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise.

**XVIII. EFFECT OF SETTLEMENT; CONTRIBUTION**

85. Except as provided in ¶ 84 (Waiver of Claims by SDs), nothing in this CD shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this CD. Except as provided in Section XVII (Covenants by SDs), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this CD diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons 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).

86. The Parties agree, and by entering this CD this Court finds, that this CD constitutes a judicially-approved settlement pursuant to which each SD has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and 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 CD. The “matters addressed” in this CD are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person; provided, however, that if the

United States exercises rights under the reservations in Section XVI (Covenants by Plaintiffs), other than in ¶ 77.a (claims for failure to meet a requirement of the CD), ¶ 77.g (criminal liability), or ¶ 77.h (violations of federal/state law during or after implementation of the Work), the “matters addressed” in this CD will no longer include those response costs or response actions that are within the scope of the exercised reservation.

87. The Parties further agree, and by entering this CD this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this CD constitutes a judicially-approved settlement pursuant to which each Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

88. Each SD shall, with respect to any suit or claim brought by it for matters related to this CD, notify the United States and the State in writing no later than 60 days prior to the initiation of such suit or claim.

89. Each SD shall, with respect to any suit or claim brought against it for matters related to this CD, notify in writing the United States and the State within 10 days after service of the complaint on such SD. In addition, each SD shall notify the United States and the State 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.

90. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, SDs shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XVI (Covenants by Plaintiffs).

## **XIX. ACCESS TO INFORMATION**

91. SDs shall provide to EPA and the State, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”) within SDs’ possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this CD, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. SDs shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

**92. Privileged and Protected Claims**

a. SDs 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 SDs comply with ¶ 92.b, and except as provided in ¶ 92.c.

b. If SDs 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, SDs shall provide the Record to Plaintiffs in redacted form to mask the privileged or protected portion only. SDs 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 the SDs' favor.

c. SDs may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, 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 SDs are required to create or generate pursuant to this CD.

**93. Business Confidential Claims.** SDs may assert that all or part of a Record provided to Plaintiffs under this Section or Section XX (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). SDs shall segregate and clearly identify all Records or parts thereof submitted under this CD for which SDs assert business confidentiality claims. Records that SDs claim to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and the State, or if EPA has notified SDs that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to SDs.

94. If relevant to the proceeding, the Parties agree that validated sampling or monitoring data generated in accordance with the SOW and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this CD.

95. Notwithstanding any provision of this CD, Plaintiffs retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

**XX. RETENTION OF RECORDS**

96. Until 10 years after EPA's Certification of Work Completion under ¶ 3.10 (Certification of Work Completion) of the SOW, each SD shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that SDs who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of

any other person under CERCLA with respect to the Site. Each Performing SD must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Performing SD (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

97. At the conclusion of this record retention period, SDs shall notify the United States and the State at least 90 days prior to the destruction of any such Records, and, upon request by the United States or the State, and except as provided in ¶ 92 (Privileged and Protected Claims), SDs shall deliver any such Records to EPA or the State.

98. Each SD certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

## XXI. NOTICES AND SUBMISSIONS

99. All approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, and requests specified in this CD must be in writing unless otherwise specified. Whenever, under this CD, notice is required to be given, or a report or other document is required to be sent, by one Party to another, it must be directed to the person(s) specified below at the address(es) specified below. Any Party may change the person and/or address applicable to it by providing notice of such change to all Parties. 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.

**As to the United States:**

*via email to:*  
Chief, Environmental Enforcement Section  
[eescdcopy.enrd@usdoj.gov](mailto:eescdcopy.enrd@usdoj.gov)  
Re: DJ # 90-11-2-298

**As to EPA:**

*via email to:*  
Debra Rossi (3SD23)  
EPA Project Coordinator  
[rossi.debra@epa.gov](mailto:rossi.debra@epa.gov)

and

William A. Geiger (3SD23)  
Chief – DE, VA, WV, Remediation Section  
[geiger.william@epa.gov](mailto:geiger.william@epa.gov)  
Re: Site/Spill ID #0345

**As to EPA Cincinnati Finance  
Center:**

*via email to:*  
[cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov)  
Re: Site/Spill ID #0345

**As to the State:**

*via email to:*  
Patrick Boettcher  
State Project Coordinator  
[Patrick.boettcher@delaware.gov](mailto:Patrick.boettcher@delaware.gov)

**As to Performing SDs:**

*via email to:*  
Douglas Sutton  
SDs' Project Coordinator  
HydroGeoLogic, Inc.  
[dsutton@hgl.com](mailto:dsutton@hgl.com)

## **XXII. RETENTION OF JURISDICTION**

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

## **XXIII. APPENDICES**

101. The following appendices are attached to and incorporated into this CD:

“Appendix A” is the Record of Decision Amendment No. 2 signed on December 12, 2017.

“Appendix B” is the SOW.

“Appendix C” is the map of the Site.

“Appendix D” is the complete list of SDs.

“Appendix E” is the draft form of Proprietary Controls.

“Appendix F” is a list of Non-Performing Settling Defendants.

“Appendix G” is a list of Performing Settling Defendants.

#### **XXIV. MODIFICATION**

102. Except as provided in ¶ 13 (Modification of SOW or Related Deliverables), material modifications to this CD, including the SOW, shall be in writing, signed by the United States and SDs, and shall be effective upon approval by the Court. Except as provided in ¶ 13, non-material modifications to this CD, including the SOW, shall be in writing and shall be effective when signed by duly authorized representatives of the United States and SDs. All modifications to the CD, other than the SOW, also shall be signed by the State, or a duly authorized representative of the State, as appropriate. A modification to the SOW shall be considered material if it implements a ROD amendment that fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any modification to the SOW, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

103. Nothing in this CD shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this CD.

#### **XXV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

104. This CD shall be lodged with the Court for at least 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the CD disclose facts or considerations that indicate that the CD is inappropriate, improper, or inadequate. SDs consent to the entry of this CD without further notice.

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

#### **XXVI. SIGNATORIES/SERVICE**

106. Each undersigned representative of a SD to this CD and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice and the Deputy Attorney General for the State for the State of Delaware certifies that he or she is fully authorized to enter into the terms and conditions of this CD and to execute and legally bind such Party to this document.

107. Each SD agrees not to oppose entry of this CD by this Court or to challenge any provision of this CD unless the United States has notified SDs in writing that it no longer supports entry of the CD.

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

**XXVII. FINAL JUDGMENT**

109. This CD and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the CD. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this CD.

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

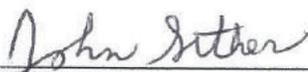
SO ORDERED THIS \_\_ DAY OF \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
United States District Judge

Signature Page for Consent Decree in the matter *United States v. Hercules et al.*:

**FOR THE UNITED STATES OF AMERICA:**

TODD KIM  
Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources Division

  
\_\_\_\_\_  
JOHN SITHER  
Senior Counsel  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Phone: 202-514-5484  
Fax: 202-616-6583  
Email: [john.sither@usdoj.gov](mailto:john.sither@usdoj.gov)

/s/ Laura D. Hatcher  
\_\_\_\_\_  
LAURA D. HATCHER  
Civil Chief  
Office of the United States Attorney  
District of Delaware  
1007 N. Orange Street, Suite 700  
P.O. Box 2046  
Wilmington, DE 19899-2046  
Phone: 302-573-6205  
Fax: 302-573-6431  
Email: [laura.hatcher@usdoj.gov](mailto:laura.hatcher@usdoj.gov)

Signature Page for Consent Decree in the matter of *United States v. Hercules et al.*:

**Diana Esher** Digitally signed by Diana Esher  
Date: 2022.05.16 10:23:48  
-04'00'

---

Adam Ortiz  
Regional Administrator, Region 3  
U.S. Environmental Protection Agency  
4 Penn Center  
Philadelphia, PA 19103

**CECIL  
RODRIGUES** Digitally signed by CECIL  
RODRIGUES  
Date: 2022.05.09 15:46:35 -04'00'

---

Cecil Rodrigues  
Regional Counsel  
U.S. Environmental Protection Agency  
Region III  
4 Penn Center  
Philadelphia, PA 19103

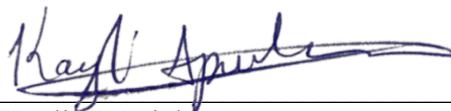
**BENJAMIN  
COHAN** Digitally signed by BENJAMIN  
COHAN  
Date: 2022.04.20 14:45:21 -04'00'

---

Benjamin M. Cohan  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 3  
4 Penn Center  
Philadelphia, PA 19103

Signature Page for Consent Decree in the matter of *United States v. Hercules et al.*:

**FOR THE STATE OF DELAWARE:**



---

Kayli H. Spialter  
Deputy Attorney General  
391 Lukens Dr.  
New Castle, DE 19720



---

Shawn M. Garvin  
Secretary of the Delaware Department  
Of Natural Resources and Environmental Control  
89 Kings Hwy.  
Dover, DE 19901

Signature Page for Consent Decree in the matter of *United States v. Hercules et al.*:

FOR Chemours Company FG LLC  
[Print name of Settling Defendant]

  
Name (print): TOM E.  
Title: Director - Environment and Remediation  
Address: 1007 Market St.  
PO Box 20477  
Wilmington DE 19801

Agent Authorized to Accept Service on Behalf of Above-signed Party: Name (print): Richard F. Ricci  
Title: Counsel  
Company: Lowenstein Sandler LLP  
Address: One Lowenstein Drive  
Roseland, NJ 07068  
Phone: 973-597-2462  
email: rricci@lowenstein.com

Signature Page for Consent Decree in the matter of *United States v. Hercules et al.*:

FOR Hercules LLC \_\_\_\_\_:  
[Print name of Settling Defendant]



Name (print): Richmond L. Williams  
Title: Chief Counsel, Environmental Remediation  
Address: 500 Hercules Rd., Wilmington, DE 19808

Agent Authorized to Accept Service on Behalf of Above-signed Party: Name (print): Yvonne Winkler  
Title: General Counsel  
Company: Ashland LLC  
Address: 500 Hercules Road  
Wilmington, DE 19808  
Phone: 302-594-5000  
email: ywinkler@ashland.com

Signature Page for Consent Decree in the matter of *United States v. Hercules et al.*:

FOR:

  
Waste Management of Delaware, Inc.

---

Name (print): David Moreira  
Title: Area Director  
Address: 4 Liberty Lane  
Hampton, NH 03842

Agent Authorized to Accept Service on Behalf of Above-signed Party: Name (print): Joseph F. Odea, Jr.  
Company: Saul Ewing Arnstein & Lehr LLP  
Address: 1500 Market Street, 38th Floor  
Philadelphia, PA 19102-2186  
Phone: 215-972-7109  
email: joseph.odea@saul.com

Signature Page for Consent Decree in the matter of *United States v. Hercules et al.*:

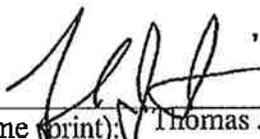
  
FOR: \_\_\_\_\_  
SC Holdings, Inc., Successor-in-Interest to SCA Services, Inc.

\_\_\_\_\_  
Name (print): David Moreira  
Title: Area Director  
Address: 4 Liberty Lane  
Hampton, NH 03842

Agent Authorized to Accept Service on Behalf of Above-signed Party: Name (print): Joseph F. Odea, Jr.  
Company: Saul Ewing Arnstein & Lehr LLP  
Address: 1500 Market Street, 38th Floor  
Philadelphia, PA 19102-2186  
Phone: 215-972-7109  
email: joseph.odea@saul.com

Signature Page for Consent Decree in the matter of *United States v. Hercules et al.*:

FOR Cytec Industries Inc. :  
[Print name of Settling Defendant]

  
Name (print): Thomas J. Irwin  
Title: Secretary  
Address: 504 Carnegie Center, Princeton, NJ 08540

Agent Authorized to Accept Service on Behalf of Above-signed Party: Name (print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Company: Corporation Service Company  
Address: 251 Little Falls Drive  
Wilmington, DE 19808  
Phone: 800-927-9800  
email: sop@cscglobal.com

Signature Page for Consent Decree in the matter of *United States v. Hercules et al.*:

FOR Zeneca, Inc. \_\_\_\_\_:  
[Print name of Settling Defendant]

DocuSigned by:  
  
AF3BEFC87687495...

\_\_\_\_\_  
Name (print): Kevin Durning  
Title: President  
Address: 1800 Concord Pike, A2C  
Wilmington, DE 19850

Agent Authorized to Accept Service on Behalf of Above-signed Party: Name (print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
email: \_\_\_\_\_

FOR BayerCrop Science Inc. :  
[Print name of Settling Defendant]

DocuSigned by:  
*Charles Elmendorf*  
CFC4CC7E86AB43C

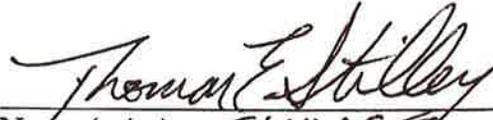
On behalf of Stauffer  
Management Company LLC,  
Litigation Agent

Name (print): Charles Elmendorf  
Title: president  
Address: 1800 Concord Pike, A2C  
Wilmington, Delaware 19850

Agent Authorized to Accept Service on Behalf of Above-signed Party: Name (print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
email: \_\_\_\_\_

Signature Page for Consent Decree in the matter of *United States v. Hercules et al.*, Civil Action No. 89-CV-562-SLR:

FOR E I DUPONT DE NEMOURS:  
[Print name of Settling Defendant]



Name (print): THOMAS E. STILLEY  
Title: REMEDIATION GROUP LEADER  
Address: 974 CENTRE RD  
CAP 735  
WILMINGTON, DE 19805

Agent Authorized to Accept Service on Behalf of Above-signed Party: Name (print): \_\_\_\_\_  
Title: \_\_\_\_\_ C T Corporation System  
Company: \_\_\_\_\_ 1209 North Orange Street  
Address: \_\_\_\_\_ Wilmington DE 19701  
\_\_\_\_\_ (800) 677-3394  
Phone: \_\_\_\_\_  
email: \_\_\_\_\_

Signature Page for Consent Decree in the matter of *United States v. Hercules et al.*, Civil Action No. 89-CV-562-SLR:

FOR BP Amoco Chemical Company (now known as INEOS Chemical Company)  
[Print name of Settling Defendant]

DocuSigned by:  
Susan Baur  
E7B446C0860C46C...

Name (print): Susan Baur  
Title: President of BP Company North America Inc on behalf of BP Amoco Chemical Company  
Address: 501 Westlake Park Blvd, Houston, TX, 77079 US

Agent Authorized to Accept Service on Behalf of Above-signed Party: Name (print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Company: The Corporation Trust Company  
Address: 1209 Orange St, Wilmington, Delaware 19801 US  
Phone: \_\_\_\_\_  
email: \_\_\_\_\_

Signature Page for Consent Decree in the matter of *United States v. Hercules et al.*, Civil Action No. 89-CV-562-SLR:

**FOR The Goodyear Tire & Rubber Company :**  
[Print name of Settling Defendant]

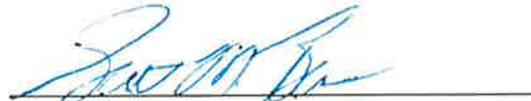


Name (print): Ellis Jones  
Title: VP and Chief Sustainability Officer  
Address: The Goodyear Tire & Rubber Company  
200 Innovation Way  
Akron, Ohio 44316

Agent Authorized to Accept Service on Behalf of Above-signed Party: Name (print): Steven C. Bordenkircher  
Title: Senior Legal Counsel  
Company: The Goodyear Tire & Rubber Company  
Address: 200 Innovation Way  
Akron, Ohio 44316  
Phone: 330-796-6738  
email: steven\_bordenkircher@goodyear.com

Signature Page for Consent Decree in the matter of *United States v. Hercules et al.*:

FOR CHEVRON U.S.A. INC. :



Name: Scott M. Banks  
Title: Assistant Secretary  
Address: 6001 Bollinger Canyon Road  
San Ramon, CA 94583

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

Name (print): Nick Longo  
Title: Risk Management & Spills Specialist  
Company: Chevron  
Address: 1400 Smith St.  
Houston, TX 77002-7327  
Phone: (832) 854-5711  
email: Nick.Longo@Chevron.com

Signature Page for Consent Decree in the matter of *United States v. Hercules et al.*:

FOR CNA Holdings LLC :  
[Print name of Settling Defendant]

  
Name (print): John A. King  
Title: Assistant Secretary  
Address: 222 West Las Colinas Blvd.  
Suite 900 N  
Irving, TX 75039

Agent Authorized to Accept Service on Behalf of Above-signed Party: Name (print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Company: Corporate Creations  
Address: 801 US Highway 1  
North Palm Beach, FL 33408  
Phone: 561-694-8107  
email: contactus@corporatecreations.com

Signature Page for Consent Decree in the matter of *United States v. Hercules et al.*:

**FOR ESSCHEM, INC. :**  
Non-Performing Settling Defendant



Parker Justi  
Corporate Secretary & General Counsel  
Esschem, Inc.

Agent Authorized to Accept Service Name (print): Parker Justi  
on Behalf of Above-signed Party: Title: Corporate Secretary & General Counsel  
Company: Esschem, Inc.  
Address: 4000 Columbia Ave.  
Linwood, PA 19061  
Phone: (610) 497-9000  
email: pjusti@justigroup.com

Signature Page for Consent Decree in the matter of *United States v. Hercules et al.*:

FOR FMC Corporation :  
[Print name of Settling Defendant]



Name (print): DOUGLAS GROUX  
Title: Director EHS Remediation & Governance  
Address: 2929 Walnut St.  
Philadelphia, PA 19104

Agent Authorized to Accept Service Name (print): \_\_\_\_\_  
on Behalf of Above-signed Party: Title: \_\_\_\_\_

Company: THE CORPORATION TRUST CO.

Address: 1209 ORANGE ST.

WILMINGTON, DE 19801

Phone: 866-401-8252

email: EASTTEAM2@WOLTERSKLWER.COM

Signature Page for Consent Decree in the matter of *United States v. Hercules et al.*:

Clarios LLC, successor to the former Johnson Controls, Inc.  
automotive battery business Johnson Controls Battery Group,  
Inc. (f/k/a Globe Union, Inc.)

**FOR** \_\_\_\_\_:  
[Print name of Settling Defendant]



Name (print): Claudio Morfe  
Title: Vice President, General Counsel and Corporate Secretary  
Address: Florist Towner  
5757 N. Green Bay Ave.  
P.O. Box 591  
Milwaukee, WI 53201

Agent Authorized to Accept Service on Behalf of Above-signed Party: Name (print): Benjamin C. Grawe  
Title: Attorney  
Company: DeWitt LLP  
Address: 2 E. Mifflin St., Ste. 600  
Madison, WI 52703  
Phone: (608) 283-5601  
email: bcg@dewittllp.com

Signature Page for Consent Decree in the matter of *United States v. Hercules et al.*:

**FOR** KLHC, Inc. (as successor-in-interest to Ludlow Corporation)  
[Print name of Settling Defendant]

DocuSigned by:  
*Pat Duft*

84F39504AF7F4G5...  
Name (print): Patricia H. Duft  
Title: Vice President  
Address: 710 Medtronic Parkway, LC 300  
Minneapolis, MN 55432

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

Name (print): Geoffrey C. Rathgeber  
Title: Attorney for KLHC, Inc.  
Company: Medtronic, Inc.  
Address: 710 Medtronic Parkway, LC 300  
Minneapolis, MN 55432  
Phone: 470-792-4499  
email: geoff.c.rathgeber@medtronic.com

FOR Honeywell International Inc.  
[Print name of Settling Defendant]



Name (print): Benny Delghi  
Title: Global Remediation Director  
Address: 855 S Mint St. Charlotte, North Carolina 28202

Agent Authorized to Accept Service on Behalf of Above-signed Party:	Name (print):	<u>Chuck Anthony</u>
	Title:	<u>General Counsel - HSEPS</u>
	Company:	<u>Honeywell International Inc.</u>
	Address:	<u>855 S. Mint St.</u>
		<u>Charlotte, NC 28202</u>
	Phone:	<u>980-279-3070</u>
	email:	<u>charles.anthony@honeywell.com</u>

Signature Page for Consent Decree in the matter of *United States v. Hercules et al.*:

**FOR M.A. Hanna Plastic Group, Inc. (as  
successor-in-interest to Cadillac Plastic  
Group, Inc.)**



---

Name: Robert K. James  
Title: Secretary  
Address: 33587 Walker Road  
Avon Lake, Ohio 44012

Agent Authorized to Accept Service on Behalf of Above-signed Party:	Name (print):	<u>Robert K. James</u>
	Title:	<u>Secretary</u>
	Company:	<u>M.A. Hanna Plastic Group, Inc.</u>
	Address:	<u>33587 Walker Road</u> <u>Avon Lake, Ohio 44012</u>
	Phone:	<u>(440) 930-1361</u>
	email:	<u>robert.james@avient.com</u>

Signature Page for Consent Decree in the matter of *United States v. Hercules et al.*:

FOR New Castle County  
(Matthew Meyer) \_\_\_\_\_ :  
[Print name of Settling Defendant]

  
Name (print): Matthew Meyer  
Title: County Executive  
Address: 87 Reads Way  
New Castle, DE 19720

Agent Authorized to Accept Service on Behalf of Above-signed Party: Name (print): Wilson Davis, Esquire  
Title: County Attorney  
Company: New Castle County  
Address: 87 Reads Way  
New Castle, DE 19720  
Phone: 302 - 395 - 5146  
email: \_\_\_\_\_

Signature Page for Consent Decree in the matter of *United States v. Hercules et al.*:

FOR Occidental Chemical Corporation :  
[Print name of Settling Defendant]

Juan P.  
Somoano

Digitally signed by: Juan P. Somoano  
DN: CN = Juan P. Somoano email = Juan\_somoano@oxy.com C = AD  
Date: 2022.03.27 12:45:31 -05'00'

Name (print): Juan P. Somoano  
Title: Vice President  
Address: 14555 Dallas Parkway, Suite 400  
Dallas, Texas 75254

Agent Authorized to Accept Service on Behalf of Above-signed Party: Name (print): \_\_\_\_\_  
Title: \_\_\_\_\_

Company: The Corporation Trust Company  
Address: 1209 Orange Street  
Wilmington, DE 19801  
Phone: 877-564-7529  
email: \_\_\_\_\_

with copy to:

Robert W. Whetzel  
(Attorney for Occidental)  
Richards, Layton & Finger, P.A.  
P. O. Box 551  
Wilmington, DE 19899  
Phone: 302.651.7634  
Email: whetzel@rlf.com

Signature Page for Consent Decree in the matter of *United States v. Hercules et al.*:

**FOR** Verizon Delaware LLC :  
[Print name of Settling Defendant]



\_\_\_\_\_  
Name (print): Pam M. Cox  
Title: Environmental Health & Safety Officer  
Address: 901 Tatnall Street, Wilmington, DE 19801

Agent Authorized to Accept Service on Behalf of Above-signed Party: Name (print): \_\_\_\_\_  
Title: Registered Agent for Service of Process  
Company: The Corporation Trust Company  
Address: 1209 Orange Street  
Wilmington, DE 19801  
Phone: 302-658-7581  
email: \_\_\_\_\_