143466 E.S Rogers, B 11/12/91

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	CAUSE NO. IP 91-591-C
ALUMINUM COMPANY OF AMERICA, et al., Defendants.	)	

ORDER

This matter comes before the Court on the Motion of the United States of America to enter the Northside Consent Decree lodged May 29, 1991, the response thereto filed by the Northside Remediation Committee, and the Reply thereto filed by the United States.

Being duly advised, the Court hereby ORDERS:

1. The Consent Decree lodged on May 29, 1991 by the plaintiff is fair, reasonable, and consistent with the Environmental Response, Compensation and Liability Act, and is hereby entered as an order of this Court; and

2. The standard of liability of the Trustees that serve under the trust agreements established pursuant to Article XXIII of said Consent Decree (Appendices D and E thereto) shall be set forth in section 3.08 of both Appendices D and E.

IT IS SO ORDERED.

90-11-2-48D

DATED this 12th day of November, 1991.

James E. Noland, Judge

JAMES E. NOLAND, U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA, STATE OF INDIANA, Plaintiffs, v. ALUMINUM COMPANY OF AMERICA, *et al.*, Defendants.	)	Civil Action No.

CONSENT DECREE

TABLE OF CONTENTS

		Page
I.	BACKGROUND	1
II.	JURISDICTION	8
III.	PARTIES BOUND	8
IV.	DEFINITIONS	9
V.	GENERAL PROVISIONS	12
VI.	PERFORMANCE OF THE WORK	18
VII.	U.S. EPA PERIODIC REVIEW TO ASSURE PROTECTION - OF HUMAN HEALTH AND ENVIRONMENT	23
VIII.	QUALITY ASSURANCE	24
IX.	SAMPLING AND DOCUMENT AVAILABILITY	25
X.	REPORTING REQUIREMENTS	26
XI.	REMEDIAL PROJECT MANAGER/PROJECT COORDINATORS	28
XII.	FORCE MAJEURE	29
XIII.	DISPUTE RESOLUTION	31
XIV.	RETENTION AND AVAILABILITY OF INFORMATION	34
XV.	REIMBURSEMENT	36
XVI.	STIPULATED PENALTIES	39
XVII.	COVENANTS NOT TO SUE	44
XVIII.	TREATMENT OF NSL WASTE BY IDPW	48
XIX.	EFFECT OF SETTLEMENT	51
XX.	COVENANTS NOT TO SUE AND SPECIAL PROVISIONS FOR PREMIUM SETTLING DEFENDANTS AND PREMIUM SETTLING GOVERNMENT AGENCIES	55
XXI.	INDEMNIFICATION; OTHER CLAIMS	59
XXII.	LITIGATION AGAINST NON-SETTLORS	60
XXIII.	NSL TRUST FUNDS	61
XXIV.	NOTICES	62

Page

XXV. CONSISTENCY WITH NATIONAL CONTINGENCY PLAN 63

XXVI. RESPONSE AUTHORITY 64

XXVII. COMMUNITY RELATIONS 64

XXVIII. USE OF CONSENT DECREE 64

XXIX. EFFECTIVE DATE AND TERMINATION OF CONSENT DECREE . . 65

APPENDICES

APPENDIX	TITLE
A	Statement of Work
B	Borrow Area Map
C	List of Premium Settling Defendants
D	Northside Sanitary Landfill Site Trust Fund Agreement
E	Northside Sanitary Landfill Site Section 468B Trust Fund Agreement
F	List of Premium Settling Government Agencies
G	List of Settling Defendants
H	Administrative Order on Consent
I	Proposed Amended Record of Decision

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA, STATE OF INDIANA, Plaintiffs, v. ALUMINUM COMPANY OF AMERICA, *et al.*, Defendants.	)	Civil Action No.

CONSENT DECREE

I.

BACKGROUND

The United States Environmental Protection Agency ("U.S. EPA"), pursuant to Sections 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9605, placed the Northside Sanitary Landfill ("NSL") on the National Priorities List, 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 21, 1984, 49 Fed. Reg. 37,070-37,090. NSL (the "Facility" as specifically defined in Sections IV, Paragraph E, of this Consent Decree), is located in Union Township, Boone County, approximately 5 miles north of Zionsville, Indiana.

In response to a release or substantial threat of a release of a hazardous substance at or from the Facility, the U.S. EPA commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Facility pursuant to 40 C.F.R. 300.68. U.S. EPA completed a Remedial Investigation ("RI") Report in March

1986. In December 1986 U.S. EPA completed a Feasibility Study ("FS") for the Facility.

In December 1986, U.S. EPA, pursuant to Sections 117 of CERCLA, 42 U.S.C. § 9617, published notice of the completion of the RI/FS. U.S. EPA provided opportunity for public comment to be submitted in writing to U.S. EPA by February 28, 1987, or orally at a public meeting held in the City of Zionsville, Indiana on December 17, 1986. U.S. EPA, pursuant to Sections 117 of CERCLA, 42 U.S.C. § 9617, has kept a transcript of the public meeting and has made this transcript available to the public as part of the administrative record located at U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois and at the Zionsville Town Hall, 110 South 4th Street, Zionsville, Indiana 46077.

Pursuant to CERCLA, U.S. EPA has notified certain persons and entities, including but not limited to the Settling Defendants and the Premium Settling Defendants, that U.S. EPA determined each such person or entity to be a potentially responsible party ("PRP") regarding the proposed remedial action at the Facility.

In accordance with Sections 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), U.S. EPA notified the State of Indiana on February 6, 1987, of negotiations with PRPs regarding the scope of the remedial design and remedial action for the Facility, and U.S. EPA has provided the State with an opportunity to participate in such negotiations and any settlement. Pursuant

to this notification, the State has participated in the negotiations and in this Consent Decree.

Pursuant to Sections 122(j) of CERCLA, 42 U.S.C. § 9622(j), in August 1988, U.S. EPA notified the Federal Natural Resources Trustee of negotiations with PRPs on the subject of addressing the release or threatened release of hazardous substances at the Facility.

Certain persons have provided comments on U.S. EPA's proposed remedial action. The comments, and U.S. EPA's summary of responses to them, have been included in the administrative record referred to above. Considering the recommended remedial action and the public comments received, and discussions with interested parties as reflected in the administrative record, U.S. EPA reached a decision on a remedy which is set forth in a document called a Record of Decision ("ROD") signed by the Regional Administrator on September 25, 1987, to which the State has given its concurrence, and which includes a discussion of U.S. EPA's reasons for its remedy.

The September 1987 ROD selected a combined remedy for the Facility and the adjacent Environmental Conservation and Chemical Corporation ("ECC") site. The ROD also noted that in addition to the contamination at NSL and ECC, a Third Area of contamination was suspected to exist to the south and southwest of the ECC site (the "Third Area," as defined in Sections IV, Paragraph U, of this Consent Decree.) The September, 1987 ROD noted the Third Area would be more fully defined during predesign and remedied as part of the NSL-ECC combined sites remedy.

Following issuance of the September 1987 ROD, the NSL PRPs and U.S. EPA commenced negotiations for the purpose of reaching a settlement under which the remedy for the NSL Site would be implemented by the PRPs. A principal aspect of that settlement, as incorporated in this Consent Decree, provides that a remedy be implemented at NSL that is separate from the one at ECC. Additional important changes include provisions for the construction of a pipeline (forcemain) and the treatment of leachate and groundwater by the Indianapolis Department of Public Works ("IDPW"), rather than in an on-site treatment facility. These changes, and other important refinements on the remedy selected in the ROD, are included in the Statement of Work ("SOW") that is attached as Appendix A to this Consent Decree. With regard to the Third Area, U.S. EPA and the State are not requiring that the Third Area be remediated under the terms of this Consent Decree because present information indicates that the contamination at the Third Area resulted from a source other than the NSL Site.

The Consent Decree will be subject to public comment pursuant to Sections 122(i) of CERCLA. The U.S. Department of Justice may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

U.S. EPA and the State have reviewed the SOW and U.S. EPA believes, and the State concurs, that the SOW and the supplemented administrative record support amending the ROD to

correspond with the SOW. Pursuant to Sections 117 of CERCLA, 42 U.S.C. § 9617, U.S. EPA will provide public notice of the proposed amended ROD at the same locations as the administrative record referred to above. Pursuant to Sections 117 of CERCLA, 42 U.S.C. § 9617, the notice will be published in a major local newspaper of general circulation and will include an explanation of any significant changes from the remedy selected in the September, 1987 ROD, and the reasons for such changes.

If after public comment U.S. EPA adopts an amended ROD which differs materially from the proposed amended ROD (attached as Appendix I), U.S. EPA will so notify the Settling Defendants, in writing, prior to moving to enter the Decree, and the Parties shall have thirty (30) days following adoption of the amended ROD in which to agree to modifications to the SOW in accordance with the amended ROD. The Parties may mutually agree to extend the 30-day time period referred to in the previous sentence.

If the Parties fail to reach agreement regarding modification of the SOW within the time specified above or an alternate time agreed to by the Parties, any Settling Defendant may withdraw from the Consent Decree, in which case the Decree shall be without any force or effect for any purpose as to such Settling Defendant. A Settling Defendant may withdraw from this Consent Decree under the provisions of this Paragraph by filing with the Court and serving on the Parties a notice that sets forth such Settling Defendant's decision to withdraw, within fifteen (15) days after termination of the negotiation period on SOW modifications, referred to above.

Following the time period during which Settling Defendants may elect to withdraw from the Consent Decree, the United States reserves the right to withdraw if a change in the identity or number of Settling Defendants participating in this Consent Decree causes it to conclude that entry of the Consent Decree is no longer in the public interest.

If the United States or any or all Settling Defendants withdraw from the Decree pursuant to the above-referenced procedure, such withdrawal shall not affect the obligations or rights of any Premium Settling Defendant or Premium Settling Government Agency under this Decree. In the event of withdrawal by all Settling Defendants, or by the United States, the Premium Settling Defendants and the Premium Settling Government Agencies shall execute the Administrative Order on Consent attached as Appendix H, under which all monies which were to be paid by such Premium Settling Defendants and Premium Settling Government Agencies pursuant to Sections V.A.3 and XXIII.B. of the Consent Decree shall be deposited into the Hazardous Substance Superfund, and applied to the Response Costs at the Northside Sanitary Landfill.

Pursuant to Sections 121(d)(1) of CERCLA, 42 U.S.C. § 9621(d)(1), the Parties believe that the proposed NSL remedy embodied in the SOW will attain a degree of cleanup of hazardous substances, pollutants and contaminants released into the environment and control of further releases which, at a minimum, assures protection of human health and the environment at the Facility.

Pursuant to Sections 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2), the Parties believe that the proposed NSL remedy embodied in the SOW will provide a level or standard of control for such hazardous substances, pollutants, or contaminants which at least attains legally applicable or relevant and appropriate standards, requirements, criteria, or limitations.

The Parties also believe that the proposed NSL remedy embodied in the SOW is in accordance with Sections 121 of CERCLA, 42 U.S.C. § 9621, and consistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300.

The Settling Defendants, Premium Settling Defendants and Premium Settling Government Agencies, do not admit responsibility for any Waste Materials located at the Facility and do not admit any legal or equitable liability under any statute, regulation, ordinance or common law for any response costs or damages allegedly caused by the presence or the actual or threatened release of such Waste Materials at the Facility.

The Settling Defendants, Premium Settling Defendants and Premium Settling Government Agencies nevertheless desire to settle the claims made by Plaintiffs in the Complaint. The Parties recognize and intend to further hereby the public interest in the expedition of the cleanup of the Facility and, at the same time, avoid prolonged and complicated litigation between the Parties.

ACCORDINGLY, subject to the contingencies identified above, including the adoption of an amended ROD consistent with the proposed amended ROD, the Settling Defendants agree to implement

the SOW. U.S. EPA, with the concurrence of the State, has determined that the Work required under the Consent Decree will be done properly by Settling Defendants, and that Settling Defendants are qualified to implement the SOW.

IN CONSIDERATION OF, and in exchange for, the promises and the mutual undertakings and covenants herein, and intending to be bound legally hereby, the Plaintiffs and the Settling Defendants, Premium Settling Defendants, and Premium Settling Government Agencies, by their authorized representatives, have agreed to the entry of this Consent Decree, as a binding and enforceable order of this Court.

NOW, THEREFORE, before the taking of any testimony and upon the consent of the Parties hereto, it is hereby Ordered, Adjudged and Decreed:

II.

JURISDICTION

For the limited purpose of entering and enforcing this Consent Decree, this Court has jurisdiction over the subject matter herein, and over the Parties consenting hereto. The Parties shall not challenge this Court's jurisdiction to enter and enforce this Consent Decree.

III.

PARTIES BOUND

This Consent Decree applies to and is binding upon the undersigned Parties and their successors and assigns. The undersigned representative of each Party to this Consent Decree certifies that he or she is fully authorized by the Party or

Parties whom she or he represents to enter into the terms and conditions of the Consent Decree and to execute and legally bind that Party to it.

IV.

DEFINITIONS

Whenever the following terms are used in this Consent Decree and the Appendices attached hereto, the following definitions specified in this Paragraph shall apply:

A. "Architect" or "Engineer" means the company or companies retained by the Settling Defendants to prepare the construction plans and specifications necessary to accomplish the Work defined in Paragraph BB below.

B. "Cleanup Standards" means those remediation standards set forth at Table 2, pages 2-24, 2-25 and Sections 2.1.1 and 2.3.1 in the Statement of Work attached as Appendix A.

C. "Contractor" means the company or companies retained by or on behalf of Settling Defendants to undertake and complete the Work required by this Consent Decree.

D. "Consent Decree" means this Decree and all appendices hereto, which are incorporated into and made enforceable parts of this Decree.

E. "Facility" means the Northside Sanitary Landfill site which was placed on the National Priorities List, see 49 Fed. Reg. 37070 (1984), and which consists of a landfill "facility" as defined in Sections 101(9) of CERCLA, 42 U.S.C. § 9601(a), as shown in the ROD.

F. "Hazardous substance" shall have the meaning provided in Sections 101(14) of CERCLA, 42 U.S.C. § 9601(14).

G. "IDEM" means the Indiana Department of Environmental Management.

H. "IDPW" means the City of Indianapolis, Indiana Department of Public Works.

I. "National Contingency Plan" or "NCP" shall be used as that term is used in Sections 105 of CERCLA, 42 U.S.C. § 9605, and shall refer to the Plan set forth at 40 C.F.R. Part 300.

J. "Nonsettling Party" or "Non-Settlor" means any person or entity that is a potentially responsible party for the NSL Site under Sections 107 of CERCLA, 42 U.S.C. § 9607, and that is not a Party to this Consent Decree.

K. "NSL" and "NSL Site" mean the Facility as defined in Paragraph E above.

L. "Owner/Operator" means the owner(s) and operator(s) of the Facility as defined in Sections 107(a)(1) of CERCLA.

M. "Parties" means the Plaintiffs, Settling Defendants, Premium Settling Defendants, and Premium Settling Government Agencies.

N. "Plaintiffs" means the United States of America and the State of Indiana, and their agencies and departments, except those identified as Premium Settling Government Agencies.

O. "Premium Settling Defendants" means those parties listed in Appendix C to this Consent Decree.

P. "Premium Settling Government Agencies" means those parties listed in Appendix F to this Consent Decree.

Q. "Response Costs" means any costs incurred by Plaintiffs pursuant to 42 U.S.C. §§ 9601 et seq. that are not inconsistent with the NCP.

R. "Settling Defendants" means those Parties other than the United States and the State who sign this Consent Decree, and who are listed in Appendix G.

S. "State" means the State of Indiana and all of its agencies and departments.

T. "Statement of Work" or "SOW" means the Statement of Work which is attached hereto as Appendix A, and any modifications thereto pursuant to Sections VI.C. of this Consent Decree.

U. "Third Area" means the area of contamination which exists to the south and southwest of the Enviro-Chem Corp. ("ECC") Superfund site.

V. "Trustee" means the person(s) or entity(ies) appointed pursuant to Sections XXIII.A of this Decree (NSL Trust Funds) who will manage the NSL Site Trust Funds referenced in Sections XXIII and attached as Appendices D ("Northside Sanitary Landfill Site Trust Fund Agreement") and E ("Northside Sanitary Landfill Site Sections 468B Trust Fund Agreement") to this Consent Decree.

W. "Trust Agreement" means the agreements for the establishment, funding and operation of trust funds for the Northside Site referenced in Sections XXIII and attached as Appendices D and E to this Consent Decree.

X. "United States" means the United States of America and all of its agencies and departments.

Y. "United States v. Northside Sanitary Landfill, Inc., et al.," as used in this Consent Decree and in attachments thereto, means the above-captioned case (viz. United States v. Aluminum Company of America, et al.).

Z. "U.S. DOJ" means the United States Department of Justice.

AA. "U.S. EPA" means the United States Environmental Protection Agency.

BB. "Waste Material" means any hazardous substance, as defined by 42 U.S.C. § 9601(14) and any associated contaminated material, pollutant or contaminant as defined by 42 U.S.C. § 9601(33).

CC. "Work" means the design, construction and implementation, in accordance with this Consent Decree, of the tasks described in the SOW and any schedules or plans required to be submitted pursuant thereto.

V.

GENERAL PROVISIONS

A. Overview

1. Settling Defendants and their agents shall perform the Work as defined in Sections IV, Paragraph BB, and Sections VI of this Consent Decree.

2. Such Work shall be completed in accordance with all requirements of this Consent Decree, including the standards, specifications and time periods set forth in, or required by, Sections VI hereof and the SOW.

3. Settling Defendants, Premium Settling Defendants, and Premium Settling Government Agencies shall establish one or more trust funds to pay for the Work as set forth in Sections XXIII below. Each Settling Defendant, Premium Settling Defendant, and Premium Settling Government Agency shall make payments to the trust fund to which they are a party, or, in the case of the State pursuant to Sections VI.A.2 below, shall perform work in lieu of payment, according to the terms of the governing trust agreement. Copies of the trust agreements applicable to NSL are attached as Appendices D and E to this Consent Decree.

4. If any Settling Defendant, Premium Settling Defendant, or Premium Settling Government Agency fails to meet any of its obligations under this Consent Decree, including the obligation to make payments to a trust fund, or in the case of the State pursuant to Sections VI.A.2 below, fails to perform work in lieu of payment, pursuant to Appendices D or E, all other Settling Defendants nonetheless shall remain responsible for full performance of all of the obligations hereunder, including full performance and completion of the Work, provided, however, that the provisions in Sections XX below (Covenants Not to Sue and Special Provisions for Premium Settling Defendants and Premium Settling Government Agencies) will still apply.

B. Permits and Approvals

1. Except as provided in Sections 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), all activities undertaken by the Settling Defendants pursuant to this Consent Decree shall be undertaken in accordance with the requirements of all applicable local, State

and federal laws, regulations and permits. The United States and the State have determined that the obligations and procedures authorized under this Consent Decree are consistent with the authority of the United States and the State under applicable law to establish appropriate remedial measures for the Facility.

2. In accordance with Sections 121(e) of CERCLA, 42 U.S.C. § 9621(e), the United States and the State have determined that no federal, State, or local permits are required for portions of the Work conducted entirely on-site.

3. The SOW's utilization of the IDPW wastewater treatment facility to treat extracted groundwater and leachate ("NSL waste") from the Facility is consistent with the U.S. EPA's policy regarding off-site removal of material from CERCLA sites to publicly owned treatment works ("POTWs") under CERCLA. Pursuant to 40 C.F.R. § 261.4(a)(1)(ii), the Parties agree that a permit under the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., is not required for NSL waste that enters a pipeline (forcemain) at the Facility for transport to the domestic sewage collection system of the IDPW. The IDPW has determined that sewer use authorization will be required to discharge NSL waste to the IDPW sewage collection system. A forcemain-type pipeline will be utilized to transport NSL waste to the IDPW's domestic sewage collection system, and all references to the pipeline hereafter shall refer to a forcemain-type pipeline.

4. Settling Defendants shall obtain any other permits or approvals which are necessary for off-site activities required

for the Work under federal, State or local laws and shall submit timely applications and requests for any such permits and approvals.

5. The standards and provisions of Sections XII below describing force majeure shall govern delays in obtaining permits required for the activities required for the Work, as well as the denial of any such permits.

6. Settling Defendants shall provide a copy of this Consent Decree to the Contractor hired to perform the Work and shall require the Contractor to provide a copy thereof to any subcontractor retained to perform any part of the Work. Settling Defendants shall include in all contracts or subcontracts entered into to perform the Work, provisions stating that such Contractor or subcontractors, including their agents and employees, shall comply with all applicable laws and regulations in performing all activities required by such contracts or subcontracts. This Consent Decree is not, nor shall it act as, nor is it intended by the Parties to be, a permit issued pursuant to any federal or State statute or regulation.

C. Site Access and Access to Other Areas

1. To the extent that access to the Facility, or other areas in close proximity to the Facility necessary for implementation of the response action is required, and the Facility or such other areas are owned by persons or entities other than signatories to this Consent Decree, the Settling Defendants shall immediately contact the owner(s) and use their best efforts to make arrangements for access. If the Settling

Defendants are unable to obtain such access agreements within sixty (60) days of the effective date of the Consent Decree, the Settling Defendants shall so notify U.S. EPA and the State and U.S. EPA shall use its best efforts to obtain access to the Facility or areas in close proximity needed to complete the Work in accordance with the schedule set forth in Sections 5.2 of the SOW. U.S. EPA's exercise of best efforts shall not include exercising its authority under Sections 104(j) of CERCLA, 42 U.S.C. § 9604(j); however, U.S. EPA in its discretion may exercise its authority under Sections 104(j) of CERCLA. In seeking access, U.S. EPA shall have full discretion to select the most appropriate mechanisms, including but not limited to access agreements with the owner(s) and, if necessary, seeking judicial assistance to obtain access. Settling Defendants will cooperate with U.S. EPA's efforts to obtain access. Any access agreements shall provide U.S. EPA, the State, authorized representatives of U.S. EPA and the State, and Settling Defendants' representatives and contractors with full access to the Facility or areas in close proximity, including the right to perform the Work specified in the SOW. For purposes of this paragraph, "access" means the ability to physically enter and remain on the Facility and areas in close proximity as may be necessary to implement, without interference, the Work required by this Consent Decree; and the right to utilize suitable natural materials located in the proposed borrow area shown in Appendix B to this Consent Decree (e.g., soils, clay fill, topsoil and general fill material) as provided in Sections 2.1.1 of the SOW.

2. In the event that the Settling Defendants are delayed in the implementation of the remedy due to delays in obtaining access, as defined above, the Settling Defendants shall complete all components of the remedy set forth in the SOW and the RD Report, except those components of the remedy for which access has not been obtained. Such components, however, shall be completed by the Settling Defendants within the timeframe set forth in Sections 5.2 of the SOW.

3. The State and Settling Defendants have agreed that Settling Defendants may construct and operate the pipeline to the IDPW sewage collection system provided for in the SOW along State rights-of-way adjacent to certain State roads. To the extent that any additional easements must be obtained where Work is to be performed, including but not limited to Work related to the pipeline to the IDPW sewage collection system, Settling Defendants will use their best efforts to obtain such necessary easements within ninety (90) calendar days of the effective date of this Consent Decree for purposes of implementing the requirements of this Decree. In the event that Settling Defendants are delayed in obtaining necessary easements to implement the requirements of this Consent Decree on reasonable terms, the terms of Sections XII (Force Majeure) shall govern any delays in performance caused by or attributable to such difficulties in obtaining easements. In the event that Settling Defendants are unable to use the IDPW sewage collection system for receipt and treatment of groundwater and leachate from the NSL Site, the provisions of Sections XVIII.D shall apply.

D. General Cooperation Agreement

1. The Parties agree to cooperate with each other in all respects in the implementation of the Work or other actions required by this Consent Decree and to provide each other with reasonable assistance, to the extent permitted by law, in order to promote and further the timely, economical implementation of the Work or other actions required by this Consent Decree, including but not limited to obtaining any necessary permits, rights of access, or easements referred to in this Consent Decree.

2. The Parties recognize the importance of assuring that the remedy at the Facility and the remedy at the adjacent ECC Superfund facility are compatible, and agree to work cooperatively with those entities performing the ECC remedy pursuant to this objective.

VI.

PERFORMANCE OF THE WORK

A. Statement of Work

1. Appendix A to this Consent Decree is the Statement of Work ("SOW") for the completion of remedial design and remedial action at the Facility. Except as noted in Subparagraph A.2 below, the Settling Defendants agree to perform the SOW, subject to the adoption of an amended ROD that does not differ materially from the proposed amended ROD. The SOW is hereby incorporated by reference and made an enforceable part of this Decree, subject to the provisions in Subparagraph C below.

2. The State will perform the following:

a. Allow the use, upon proper permit application and issuance, of state-controlled highway rights of way, including the use of bridges instead of stream bed cuts for stream crossings, provided that proper engineering and environmental safeguards are utilized, for the establishment of the pipeline that will connect the NSL Site with the IDPW sewer system;

b. Erect the security fence as provided in Sections 2.1.7 of the SOW, provided that Settling Defendants will be responsible for subsequent maintenance and repair of the fence; and

c. Perform inspections of the landfill cap to be installed at the Facility as part of the Work, at such intervals and for such periods as inspections are required by maintenance and monitoring plans developed pursuant to the SOW. If such inspections reveal subsidence of the landfill cap which might affect the cap's performance, the State will obtain spot elevations and dimensions of the affected areas to determine the extent of localized settlement. The State's determination will be prepared in a manner sufficient to permit the Settling Defendants to prepare bid documents to perform any corrective work that may be necessary. Settling Defendants will provide equipment to the State as necessary to obtain these measurements.

B. Conduct of the Work. All Work shall be conducted in accordance with the National Contingency Plan, the U.S. EPA Superfund Remedial Design and Remedial Action Guidance, and the requirements of this Consent Decree, including the standards,

such technology is necessary to protect human health or the environment, the dispute resolution provisions in subparagraph 3 below shall apply. Any request for modification of the SOW under this Paragraph, and the final responses of the other Parties, shall be reflected in writing and served upon all the Parties.

2. Modification by Agreement. If the Parties agree, modification of the SOW may be effected by written agreement filed with the Court.

3. Dispute Resolution. In the event of a dispute among the Parties as to the need for or the nature of a proposed modification to the SOW that relates to the selection or adequacy of the response action to be implemented, U.S. EPA shall make a determination, based on an administrative record that includes all relevant information submitted by the Parties and/or considered by U.S. EPA, as to whether and how the SOW shall be modified. Any party who disagrees with a U.S. EPA determination may challenge it in accordance with the dispute resolution provisions of Sections XIII.C.1 of this Decree.

4. Notice. In the event that a modification of the SOW under Subparagraphs 1 through 3 above calls for additional Work, notice shall be provided by U.S. EPA to the State's Project Coordinator and Settling Defendants' project coordinator (as defined in Sections XI below).

5. Consultation of the State. Any additional Work determined to be necessary by Settling Defendants is subject to approval by U.S. EPA with the consultation of the State.

D. Technical Impracticability

1. Petition. The Settling Defendants may petition U.S. EPA to waive compliance with one or more of the Cleanup Standards set forth in the SOW pertaining to long-term groundwater and leachate treatment requirements based upon a demonstration, pursuant to Sections 121(d)(4)(C) of CERCLA, 42 U.S.C. § 9621(d)(4)(C), that achievement of the Cleanup Standard(s) is "technically impracticable from an engineering perspective." A Cleanup Standard may be found to be technically impracticable for a particular contaminant when such factors as the limitations of current EPA-approved sampling, monitoring, laboratory quantification and other technologies preclude quantification of that contaminant at the Cleanup Standard level established in the SOW. No petition shall be filed until at least five (5) years have elapsed following the initial utilization of the pipeline to the IDPW sewer system.

2. Determination. U.S. EPA shall review and consider the information in the Petition submitted pursuant to Subparagraph 1 above, shall consult with the State and shall make a determination, in accordance with applicable laws and regulations in effect at the time of the Petition, as to whether compliance with any of the Cleanup Standards shall be waived; what alternative cleanup standards, if any, or other protective measures (including institutional controls), if any, shall be established; and whether any part of the remedial action shall be modified or terminated in whole or in part.

3. Review. Any party may challenge U.S. EPA's determination under Subparagraph 2 above in accordance with the dispute resolution provisions of Sections XIII.C.1 of this Decree.

4. Five-Year Review. Any technical impracticability waiver that is granted pursuant to this Sections shall be subject to the five-year review provision of Sections VII of this Decree and Sections 121(c) of CERCLA, 42 U.S.C. § 9621(c).

5. Other waivers. Nothing herein shall preclude Settling Defendants from petitioning U.S. EPA for any other waiver pursuant to Sections 121(d)(4) of CERCLA, 42 U.S.C. § 9621(d)(4).

VII.

U.S. EPA PERIODIC REVIEW TO ASSURE PROTECTION OF HUMAN HEALTH AND ENVIRONMENT

To the extent required by Sections 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, U.S. EPA shall review the remedial action at the Facility at least every five (5) years after the entry of this Consent Decree to assure that human health and the environment are being protected by the remedial action being implemented. Settling Defendants' Contractor shall provide the technical data needed for the review. If, subject to the provisions in Sections XVII (Covenant Not To Sue) and XXII (Litigation Against Non-Settlors), U.S. EPA determines, after consultation with the State, that human health or the environment are not being so protected and that further response action in accordance with Sections 104 or 106 of CERCLA, 42 U.S.C. §§ 9604, 9606, is appropriate at the Facility, the U.S.

EPA may seek to require such action. Settling Defendants reserve fully their rights to contest and defend against such action.

VIII.

QUALITY ASSURANCE

Settling Defendants shall use quality assurance, quality control, and chain of custody procedures in accordance with U.S. EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," (QAM-005/80) and subsequent amendments. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendants shall submit a Quality Assurance Project Plan ("QAPP") to U.S. EPA and the State that is consistent with the SOW and applicable guidelines. U.S. EPA, after review of Settling Defendants' QAPP(s) and the State's comments thereon, will notify Settling Defendants of any required modifications, conditional approval, disapproval, or approval of the QAPP(s). Notifications of modifications, conditional approvals, or disapprovals shall be accompanied by an explanation of U.S. EPA's basis therefor. Upon notification of disapproval or any need for modifications, Settling Defendants shall make all required modifications in the QAPP, subject to the dispute resolution provisions of Sections XIII. Sampling data, if generated in a manner consistent with the QAPP, shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendants shall assure, through appropriate contractual terms, that U.S. EPA personnel or authorized representatives are allowed reasonable access to any laboratory utilized by Settling Defendants in implementing this

Consent Decree. In addition, Settling Defendants shall have a designated laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring.

IX.

SAMPLING AND DOCUMENT AVAILABILITY

A. The Parties shall make available to each other the results of all validated sampling and/or tests or other data generated in performance of this Consent Decree, and, in the case of Settling Defendants, shall submit these results in progress reports as described in Sections X of this Consent Decree (Reporting Requirements). Each Party may review, upon request, all sampling data generated by any other Party as part of the Work conducted under this Consent Decree.

B. At the request of U.S. EPA or the State, Settling Defendants shall allow split or duplicate samples to be taken by U.S. EPA, the State and/or their authorized representatives, of any samples collected by Settling Defendants pursuant to the performance of this Consent Decree. Settling Defendants shall notify U.S. EPA and the State not less than seven (7) days in advance of such sample collection activity; provided, however, that if seven (7) days notice is not practical under the circumstances, Settling Defendants shall provide reasonable notice of the sampling activity. In addition, U.S. EPA and the State shall have the right to take any additional samples that U.S. EPA or the State deems necessary. At the request of the Settling Defendants, the U.S. EPA and/or the State will allow split and/or duplicate samples to be taken by the Settling

Defendants and/or their authorized representatives of any samples collected by U.S. EPA and/or the State relating in any way to the Facility. The U.S. EPA and/or the State shall notify the Settling Defendants not less than seven (7) days in advance of such sample collection activities; provided, however, that if seven (7) days notice is not practical under the circumstances, the U.S. EPA and/or the State shall provide reasonable notice of the sampling activity. All Parties will provide the other Parties with all results of any split sample analyses.

X.

REPORTING REQUIREMENTS

A. Settling Defendants shall require their Project Coordinator described in Sections XI to prepare and provide to U.S. EPA and the State written quarterly progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous quarter; (2) include all results of sampling and tests and all other data received by Settling Defendants during the course of the Work performed pursuant to the SOW; (3) include all plans and procedures completed under the SOW during the previous quarter; (4) describe all actions, data and plans which are scheduled for the next quarter and provide other information relating to the progress of construction as is customary in the industry; (5) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the SOW, and a description of efforts made to mitigate those delays or anticipated delays.

These quarterly progress reports are to be submitted to U.S. EPA and the State by each January 30, April 30, July 30, and October 30 following the date of approval and entry of this Consent Decree. The first quarterly progress report shall be due on or before the second quarterly reporting date following the effective date of this Consent Decree.

B. If the date for submission of any item or notification required by this Consent Decree falls upon a weekend or State or federal holiday, the time period for submission of that item or notification is extended to the next business day following the weekend or holiday.

C. Upon the occurrence of any event during performance of the Work which, pursuant to Sections 103 of CERCLA, 42 U.S.C. § 9603, requires reporting to the National Response Center, Settling Defendants shall promptly orally notify the U.S. EPA's RPM/OSC, and the State's Project Coordinator as described in Sections XI. In the event of the unavailability of the RPM/OSC and the State's Project Coordinator, Settling Defendants shall notify the Emergency Response Section, Region 5, United States Environmental Protection Agency and the State's Emergency Response Section. The above notification is in addition to the reporting required by Sections 103. Within 20 days of the onset of such an event, Settling Defendants shall furnish to Plaintiffs a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendants

shall submit a report setting forth all actions taken to respond thereto.

XI.

REMEDIAL PROJECT MANAGER/PROJECT COORDINATORS

A. U.S. EPA shall designate a Remedial Project Manager ("RPM") and/or an On-Scene Coordinator ("OSC"), and the State shall designate a Project Coordinator for the Facility. The Plaintiffs may designate other representatives, including U.S. EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. The RPM/OSC shall have the authority lawfully vested in an RPM/OSC by the National Contingency Plan.

B. Settling Defendants shall also designate a Project Coordinator who shall have primary responsibility for implementation of the Work at the Facility. During implementation of this Consent Decree the Project Coordinators of the State and Settling Defendants and U.S. EPA's RPM/OSC shall, whenever possible, operate by consensus and shall attempt in good faith to resolve informally any disputes regarding the activities to be undertaken pursuant to this Consent Decree.

C. The Settling Defendants and the State shall have the right to invoke the provisions of Sections XIII (Dispute Resolution) to contest any actions by the RPM/OSC taken pursuant to Paragraph A above.

D. To the maximum extent possible, except as specifically provided in the Consent Decree, communications between U.S. EPA,

the State and Settling Defendants, concerning the terms and conditions of this Consent Decree shall be made between the RPM/OSC and the Project Coordinators.

E. Within twenty (20) days of the effective date of this Consent Decree, Settling Defendants, the State and U.S. EPA shall notify each other, in writing, of the name, address and telephone number of the designated Project Coordinators and the RPM/OSC. The Parties will notify each other, in writing, of any changes to the originally supplied information within twenty (20) days of the date of such change.

XII.

FORCE MAJEURE

A. "Force majeure" for purposes of this Consent Decree is defined as any event arising from causes beyond the control of Settling Defendants in the exercise of due diligence which delays or prevents the performance of any obligation under this Consent Decree.

B. When Settling Defendants become aware of events which may delay the completion of any phase of the Work or delay access to the Facility or to any property on which any part of the Work is to be performed, whether or not caused by a "force majeure" event, Settling Defendants shall promptly notify the RPM/OSC and the State Project Coordinator by telephone or, in the event of their unavailability, the Director of the Waste Management Division of U.S. EPA and the Chief of the IDEM Site Management Section. Within thirty (30) days of the date on which Settling Defendants become aware, or should have become aware through the

exercise of reasonable diligence, of the event(s) which Settling Defendants identify as being responsible for the delay, Settling Defendants shall supply to Plaintiffs in writing the reason(s) for and anticipated duration of such delay, the measures taken and to be taken by Settling Defendants to prevent or minimize the delay, and the timetable for implementation of such measures. Failure to give timely notice to the RPM/OSC and State Project Coordinator will constitute a waiver of any claim of force majeure.

C. The U.S. EPA shall respond to any notification made pursuant to paragraph B within forty-five (45) days. If U.S. EPA agrees that the notification describes a force majeure event, the force majeure delay identified in the notification shall take effect, and the deadlines referred to in the SOW shall be amended to reflect the force majeure delay.

D. If the Plaintiffs and Settling Defendants cannot agree whether the reason for the delay was a force majeure event, or whether the duration of the delay is or was warranted under the circumstances, the Plaintiffs and Settling Defendants shall resolve the dispute according to Sections XIII (Dispute Resolution) below. Settling Defendants have the burden of proving force majeure as a defense to an alleged failure to comply with this Consent Decree.

XIII.

DISPUTE RESOLUTION

A. Informal Discussion

The Parties to this Consent Decree shall attempt expeditiously to resolve any disagreements that arise under this Consent Decree through informal discussions, as required by Sections 121(e)(2) of CERCLA, 42 U.S.C. § 9621(e)(2).

B. Motion for Dispute Resolution

1. In the event that any dispute arising under this Consent Decree is not resolved expeditiously through informal means, any Party desiring dispute resolution under this Sections shall give prompt written notice to the persons listed in Sections XXIV below (Notices).

2. Within ten (10) business days of the service of notice of dispute pursuant to the Paragraph B.1 above, the party who gave the notice shall serve on the other parties to this Decree a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, and all supporting documentation on which such party relies (hereinafter the "Statement of Position"). Opposing parties shall serve their Statements of Position, including supporting documentation, no later than ten (10) business days after receipt of the complaining party's Statement of Position.

3. If the Parties cannot resolve a dispute within sixty (60) calendar days from the time notice of the dispute is given by letter as described in the preceding sentence, then any Party

to this Consent Decree affected by the dispute may file a Motion for Dispute Resolution with this Court setting forth the matter in dispute and the relief requested. Any Party to this Consent Decree affected by the dispute may file such motion prior to the expiration of the sixty (60) day period if the circumstances require prompt resolution. However, in such a case U.S. EPA shall have a reasonable opportunity to render its decision and to identify the documents in the administrative record. The period for negotiations may be extended by agreement between the Parties to the dispute.

4. An administrative record of any dispute shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, the Statements of Position served pursuant to the preceding paragraphs, any relevant documents generated by any of the Parties or their contractors or agents, and any other relevant documents submitted by any of the Parties. To ensure that the administrative record is complete prior to a U.S. EPA decision, U.S. EPA shall provide notice and identify all documents upon which it intends to rely at least ten (10) business days prior to issuance of a final decision, and the Parties shall have an additional opportunity to provide documents to be included in the administrative record until three (3) business days prior to the date of decision.

5. Except as specified in Subsection XVI.E below (Stipulated Penalties), the filing of a motion with the Court challenging the U.S. EPA's decision shall not of itself extend or

postpone any Party's obligations under this Consent Decree with respect to the disputed issue.

C. Standards of Determination

1. Any decision or determination by U.S. EPA pertaining to the selection of the remedy or adequacy of the Work performed under this Consent Decree will be reviewed by the Court on the basis of the administrative record and will be upheld by the Court unless it is arbitrary and capricious or otherwise not in accordance with the law. Any decision by the Court under this Sections is subject to appeal.

2. Except as specified in Subparagraph 1 above or otherwise in this Decree, this Consent Decree does not establish burdens of proof, the scope of information and materials which may be considered by the Court, or standards of any kind for judicial determination of disputes between the Parties.

3. Notwithstanding the provisions in Subparagraph 1 above, if Congress or a court of controlling jurisdiction establishes or provides for a different procedure or standard of review, any Party may move the Court to modify Subparagraph 1 to conform to such procedure or standard.

D. Disputes Between Plaintiffs

1. Should a dispute regarding implementation of this Consent Decree arise between the Plaintiffs, they shall first attempt to resolve such dispute expeditiously and informally, and to provide the Settling Defendants with a single Statement of Position. If the Plaintiffs do not agree after a reasonable

period, the dispute shall be resolved in accordance with the provisions of this Section.

2. In the event of a dispute between the Plaintiffs, Settling Defendants may, after consultation with U.S. EPA, rely on U.S. EPA's position in implementing any aspect of the Work during the pendency of the dispute. If the dispute is resolved in the State's favor, Settling Defendants shall not be liable for any costs, penalties or other liabilities that otherwise could arise due to such reliance by Settling Defendants on U.S. EPA's position. Any delays in performance of the Work caused by or attributable to any dispute between the Plaintiffs shall constitute Force Majeure.

XIV.

RETENTION AND AVAILABILITY OF INFORMATION

A. Each Settling Defendant or its designee shall retain for a period ending five (5) years after issuance of the Certification of Completion described in Sections XXIX.B below, and make available to U.S. EPA and the State, a complete set of records and documents which relate to the performance of Work under this Consent Decree, including, but not limited to, documents reflecting the results of any sampling, tests, or other data or information generated or acquired with respect to performance of the requirements in this Consent Decree; and all documents in the possession of such Settling Defendant which have not been previously provided to U.S. EPA, and that evidence the amounts and characteristics of Waste Material that may have come to be located at the Facility, or pertain to any contract,

agreement, or other arrangement for disposal or treatment, or arrangement with a transporter for transport for disposal or treatment, of Waste Material that may have come to be located at the Facility. After the period of document retention, Settling Defendants or their designee shall notify U.S. DOJ, U.S. EPA and the State at least ninety (90) calendar days prior to the destruction of any such documents, and upon request by U.S. EPA or the State, Settling Defendants or their designee shall relinquish custody of the documents to U.S. EPA or the State.

B. Settling Defendants or their designee may assert business confidentiality claims covering part or all of the information provided in connection with this Consent Decree in accordance with Sections 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and pursuant to 40 C.F.R. 2.203(b) and applicable State law.

C. Information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B and, if determined to be entitled to confidential treatment under State law by the State, it will be afforded protection under State law by the State. If no such claim accompanies the information when it is submitted to the U.S. EPA and the State, the public may be given access to such information without further notice to Settling Defendants unless otherwise required by law.

D. Information acquired or generated by Settling Defendants or their designee in performance of Work that is subject to the provisions of Sections 104(e)(7)(F) of CERCLA,

42 U.S.C. § 9604(e)(7)(F), shall not be claimed as confidential by Settling Defendants. Documents or portions thereof which are asserted to be subject to attorney work product privilege or other privilege under law are not subject to inspection and copying under this Consent Decree, but the Settling Defendant(s) making such a claim of privilege shall provide to the requesting Party a written identification of the title and subject matter of each document for which a privilege is claimed, and an explanation as to why the privilege is applicable to the document or portion thereof. No such claim of privilege may be asserted over documents that consist exclusively of results of any sampling, tests, or other data or information required to be generated under the terms of this Decree. The requesting Party shall have the right to contest any claim of privilege by another Party through an appropriate motion to this Court. The burden of proving that a document is subject to a claim of privilege shall lie with the Party asserting the claim.

XV.

REIMBURSEMENT

A. Settling Defendants shall pay oversight costs incurred by the United States and the State which are not inconsistent with the NCP and which are incurred after the effective date of this Consent Decree in overseeing implementation of the SOW, up to and not to exceed the total amount of $650,000 over the duration of oversight activities. Payments shall be made on an annual basis and, unless disputed by the Settling Defendants, paid within 30 days of the submission of itemized cost statements

and supporting documentation by the United States and the State. The United States and the State shall submit such oversight cost claims as soon as practicable after each anniversary date of this Consent Decree. If the Settling Defendants dispute an oversight cost claim, the dispute resolution procedures in Sections XIII shall apply and payment of the disputed portion shall be suspended until the dispute is resolved by the Court (or until resolution of any appeal from the Court's decision); if the payment is still owed after resolution, that payment shall be due within thirty (30) days of the Court's decision, with accrued interest. Interest shall be calculated pursuant to 42 U.S.C. § 9607(a).

Unless Plaintiffs notify Settling Defendants to the contrary pursuant to the procedures in Sections XXIV (Notices), payment shall be made to EPA Region 5, Attn: Superfund Accounting; P.O. Box 70753; Chicago, Ill. 60673, in the form of a certified check payable to "EPA Hazardous Substance Superfund" and referencing "Northside Sanitary Landfill, No. H2" on the check, and to the Indiana Department of Environmental Management, Attn: Cashier, 105 S. Meridian St., Indianapolis, Indiana 46206-6015, in the form of a certified check payable to "Indiana Department of Environmental Management" (or to such addresses as may be subsequently identified by Plaintiffs). A copy of the cover letter accompanying all such payments shall be sent to U.S. DOJ at the address set forth in Sections XXIV (Notices), or such other address as may be identified pursuant to Sections XXIV.

B. In consideration of and upon payment of the oversight costs as provided by this Section, the United States and the State covenant not to sue the Settling Defendants for any oversight costs in excess of the cap established in subparagraph A incurred in overseeing the Work. If future response actions at the Facility are required under Sections XVII.D, the cap set forth in subparagraph A will not apply to oversight costs attributable to the future response actions.

C. If oversight costs recoverable under subparagraph A are outstanding at the time the United States and the State plan to terminate this Consent Decree, Settling Defendants shall, within thirty (30) days of the submission of an itemized cost statement and supporting documentation by the United States and the State, and before termination of this Consent Decree, pay such oversight costs, subject to resolution of any pending dispute resolution procedures for any such costs that are in dispute.

D. The Settling Defendants shall pay $22,500 to the United States in order to compensate for natural resources damages identified by the United States Department of the Interior. Payment shall be made within thirty (30) days following the effective date of this Consent Decree to the U.S. Fish and Wildlife Service, Regional Director (AFWE/ADM), Federal Building, Fort Snelling, Twin Cities, Minnesota 55111, with a reference to "Northside Sanitary Landfill" on the check. A copy of the check shall be sent to the Office of Environmental Project Review, Department of the Interior, 18th and C Streets, N.W., Washington,

D.C. 20240, and to the U.S. Department of Justice at the address set forth in Sections XXIV (Notices) below.

E. In consideration of the Payment of $30,000, the State of Indiana covenants not to sue the Settling Defendants for natural resources damages. Payment shall be made within thirty (30) days of the effective date of this Consent Decree to the State of Indiana Department of Natural Resources, State Office Building, Indianapolis, Indiana, with a reference to "Northside Sanitary Landfill."

XVI.

STIPULATED PENALTIES

A. Penalties. The Settling Defendants shall be liable to the Plaintiffs for payment of total stipulated penalties for each of the following violations of this Consent Decree, unless the violation is excused pursuant to Sections XII (Force Majeure), is caused by the actions of Plaintiffs or their agents (including but not limited to the RPM/OSC), or is reduced or waived by the Plaintiffs:

1. Late Reports. For each day that the Settling Defendants fail to submit quarterly progress reports or the reports referenced at pp. 4-1 and 5-3 of the SOW in accordance with the schedule set forth in the SOW other than those identified in Paragraph A.2. below: $100 for the first 7 days; $500 for the 8th through 30th days; and $1000 for each day after the 30th day.

2. Delayed Work. For each day that any of the items of Work specified below is delayed, $500 for the first 7 days;

$2,500 for the 8th through 30th days; $5,000 for the 31st through the 60th day; and $8,000 a day after the 60th day:

a. Submission of a Work Plan for Supplemental Investigations in accordance with the schedule set forth in Sections 5.2 of the SOW.

b. Submission of a Final Remedial Design ("RD") Report in accordance with the schedule set forth in Sections 5.2 of the SOW.

c. Completion of the hydraulic isolation wall in accordance with the schedule to be set forth in the Final RD Report.

d. Completion of the landfill remedy (i.e., the cap, leachate and combined leachate/ground-water collection systems, and the pipeline to the IDPW sewer system) in accordance with the schedule to be set forth in the Final RD Report.

3. Forgiveness of Certain Delayed Work Penalties. Stipulated penalties for the untimely submission of either the Work Plan for Supplemental Investigations or the Final RD Report will be waived if the Settling Defendants complete construction of the hydraulic isolation wall and the landfill remedy (i.e., the cap, combined leachate/ground-water collection system and the pipeline to the IDPW sewer system) within the timeframes established in the Final RD Report, so long as both the construction of the hydraulic isolation wall and the landfill remedy also are completed within seventy-two (72) months after the effective date of the Consent Decree. Settling Defendants shall not begin the Work set forth in items c and d above until U.S. EPA, after consultation with the State, has approved the Final RD Report.

Any stipulated penalties for untimely submission of the Work Plan for Supplemental Investigations or the Final RD Report shall be collected as specified pursuant to Paragraph D below, but shall be paid into an interest-bearing escrow account and shall remain there until the deadlines specified in the Final RD Report for completion of the hydraulic isolation wall, and for the landfill remedy (i.e., the cap, leachate and combined leachate/ground-water collection systems and the pipeline to the IDPW sewer system). If any of those deadlines are missed, or if Settling Defendants fail to complete the hydraulic isolation wall and the landfill remedy within seventy-two (72) months from the effective date of this Consent Decree, then the balance of the escrow account shall be paid to the Plaintiffs as provided in Paragraph D below. If all of those deadlines are met and the hydraulic isolation wall and landfill remedy are completed within seventy-two (72) months of the effective date of this Consent Decree, the balance of the escrow account shall be paid to the Trustee on behalf of the Settling Defendants.

4. Time Limitation. Penalties for failure to meet the reporting requirements listed in Subparagraph A.1 shall not accrue after the sixtieth day following the deadline unless the Plaintiffs have provided notice to Settling Defendants that they have not received such report in a timely fashion, and Settling Defendants have failed to provide such report within five days of receipt of such notice.

B. Accrual Dates. Except as provided in Paragraph E below, all stipulated penalties begin to accrue on the day

following the day that complete performance for each item specified in Paragraph A is due, and continue to accrue through the final day of correction of the noncompliance. Payment of stipulated penalties shall not alter in any way Settling Defendants' obligations to complete performance.

C. Notice. Following a determination by EPA, after consultation with the State, that Settling Defendants may have failed to comply with the requirements of this Consent Decree, Plaintiffs shall give Settling Defendants written notice of said claim and describe the alleged noncompliance. This notice shall also identify the deadline missed and indicate the amount of stipulated penalties allegedly due.

D. Payment. All stipulated penalties owed to the Plaintiffs under this Sections shall be payable within thirty (30) days of receipt of written demand, if the Settling Defendants do not invoke the dispute resolution procedures under Sections XIII above. Interest shall begin to accrue on the unpaid balance of any specific penalty at the end of the thirty (30) day period for that penalty, whether or not dispute resolution procedures have been invoked. Interest shall be calculated pursuant to 42 U.S.C. § 9607(a). One half of all stipulated penalties owed shall be paid by certified check to the United States, and the other half shall be paid to the State of Indiana, as described below. Interest payments will be divided equally between the United States and the State. Such payments shall reference "Northside Sanitary Landfill, No. H2" and the

docket number of this case. All checks shall be prepared and transmitted in accordance with Sections XV.A.

E. Disputes. Settling Defendants may dispute Plaintiffs' right to the stipulated penalties specified in the notice given pursuant to Subparagraph C above in accordance with the dispute resolution procedures of Sections XIII above. During such disputes, penalties shall accrue, with interest, but need not be paid during the dispute resolution period. If the Court becomes involved in the resolution of the dispute, the period of dispute shall end upon the rendering of a decision by the Court regardless of whether any party appeals such decision. In the event of an appeal, the penalty amount in dispute shall be placed into an escrow account until a decision has been rendered by the final court of appeal. If the Settling Defendants prevail upon resolution, no penalties shall be payable. If the Settling Defendants do not prevail upon resolution, Plaintiffs have the right to collect all penalties which accrued prior to and during the period of dispute. The Settling Defendants shall, however, have the right to petition the Court for a finding that the Settling Defendants' position regarding the dispute had substantial support in law, fact and/or expert opinion (as applicable) and reasonably could have been expected to prevail, in light of the applicable standard of judicial review, and that Settling Defendants sought dispute resolution at the earliest practicable time and took all other appropriate steps to avoid any delay in remedial action work as a result of the dispute. If the Court so finds, the Court may reduce the stipulated penalties

by any amount that the Court deems appropriate. Settling Defendants shall have the burden of proof and persuasion on any petition for reduction of stipulated penalties submitted hereunder.

F. Choice of Penalties. Nothing herein shall preclude EPA from assessing civil penalties or bringing an action in this Court pursuant to Sections 109 of CERCLA for any failure or refusal to comply with the provisions of this Consent Decree. The United States may elect, in its sole discretion, whether to seek stipulated penalties under this Sections or to seek civil penalties under Sections 109 of CERCLA for a particular violation of the Consent Decree, but agrees not to seek both types of penalties for the same violation.

G. Effect of Notice. The filing of a written notice of a dispute shall not alter in any way the Settling Defendants' obligations to complete the activities required of them under this Consent Decree.

XVII.

COVENANTS NOT TO SUE

A. In consideration of actions which will be performed and payments which will be made by the Settling Defendants under the terms of the Consent Decree, and except as otherwise specifically provided in this Section, the United States and the State covenant not to sue the Settling Defendants or their officers, directors, employees, or agents for Covered Matters.

B. Covered Matters shall include the following:

(1) Any and all claims available to Plaintiffs under any environmental statute or regulation

administered by U.S. EPA, including but not limited to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Sections 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6973, and any and all claims available to the State under any environmental statute, regulation, or common law doctrine, including but not limited to Indiana Code §§ 13-7-8.5 to -8.7, and 13-7-5-7 to -10, based on the facts surrounding the transactions or occurrences as described in Plaintiffs' Complaint against the Settling Defendants or the Work and activities performed by the Settling Defendants in compliance with this Consent Decree;

(2) Potential claims of the United States or the State against the Settling Defendants for reimbursement under the provisions of Sections 107 of CERCLA, 42 U.S.C. § 9607, for all costs attributable to the Facility incurred prior to the effective date of this Consent Decree, including but not limited to all costs in connection with the Remedial Investigation and Feasibility Study and predesign studies for the Facility and all associated contractor, administrative and legal costs, all of which are hereby expressly waived; and

(3) Any claim by Plaintiffs for natural resources damages under Sections 107(a) of CERCLA, 42 U.S.C. § 9607(a).

C. "Covered Matters" do not include:

(1) Liability arising from hazardous substances removed from the Facility by Settling Defendants in the course of the Work;

(2) Claims based on a failure by the Settling Defendants to meet the requirements of this Consent Decree;

(3) Criminal liability;

(4) Any matters for which the United States is owed indemnification under Sections XXII hereof; and

(5) Liability for violations of federal or State law which occur during implementation of the remedial action.

D. Notwithstanding any other provision in this Consent Decree, (1) the United States reserves the right to institute

proceedings in this action or in a new action or to issue an Order seeking to compel the Settling Defendants to perform additional CERCLA response work at the Facility and (2) the United States and the State reserve the right to institute proceedings in this action or in a new action seeking to reimburse the United States for natural resource damage and for its Response Costs and to reimburse the State for its matching share of any response action undertaken by U.S. EPA or the State under CERCLA, relating to the Facility.

(a) The United States may institute proceedings referenced in Clauses (1) and (2) above where liability arises as follows:

1. For proceedings prior to termination of this Consent Decree pursuant to Sections XXIX below, conditions at the Facility previously unknown to the United States are discovered after the entry of this Consent Decree, or information is received, in whole or part, after entry of this Consent Decree, and those previously unknown conditions or that information indicate that the remedial action is not protective of human health and the environment; and

2. For proceedings subsequent to termination of this Consent Decree pursuant to Sections XXIX below, conditions at the Facility previously unknown to the United States are discovered after the termination of the Decree, or information is received, in whole or in part, after termination of this Consent Decree; and those previously unknown conditions or that information indicate that the remedial action is not protective of human health and the environment.

(b) The State may institute proceedings referenced in Clause (2) above where liability arises as follows:

1. For proceedings prior to termination of this Consent Decree pursuant to Sections XXIX

below, conditions at the Facility previously unknown to the State are discovered after the entry of this Consent Decree, or information is received, in whole or part, after entry of this Consent Decree, and those previously unknown conditions or that information indicate that the remedial action is not protective of human health and the environment; and

2. For proceedings subsequent to termination of this Consent Decree pursuant to Sections XXIX below, conditions at the Facility previously unknown to the State are discovered after the termination of the Decree, or information is received, in whole or in part, after termination of this Consent Decree; and those previously unknown conditions or that information indicate that the remedial action is not protective of human health and the environment.

E. The covenants not to sue set forth in Paragraph A above shall take effect on the effective date of this Consent Decree as described in Sections XXIX.A below. With respect to future liability, the covenants not to sue shall take effect upon certification by EPA of the completion of the remedial action pursuant to Sections XXIX.B below. All covenants not to sue shall remain in effect following termination of this Consent Decree.

F. Notwithstanding any other provision in this Consent Decree, the covenants not to sue in this Sections shall not relieve the Settling Defendants of their obligation to meet and maintain compliance with the requirements set forth in this Consent Decree.

G. Subject to the provisions in subparagraph XVII.A above, nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or

cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity not a signatory to this Consent Decree for any liability it may have arising out of or relating to the Facility. Plaintiffs expressly reserve the right to sue any person, other than the Settling Defendants, in connection with the Facility.

XVIII.

TREATMENT OF NSL WASTE BY IDPW

A. The IDPW and the other Settling Defendants have entered a Wastewater Treatment Agreement pursuant to which IDPW will, subject to the terms and conditions of that agreement, collect in its sewer system leachate and groundwater from the Facility ("NSL waste") and treat such waste at IDPW's Advanced Wastewater Treatment Plant for purposes of implementing the Work required by this Consent Decree. Plaintiffs are not parties to the Wastewater Treatment Agreement.

B. Prior to entering the IDPW sewage treatment works, the NSL waste will mix in the IDPW sewer system with sanitary and other wastes that have been discharged to the IDPW sewer system by other users.

C. The Parties agree, and the Court finds, that such receipt and treatment of NSL waste by the IDPW currently is regulated by the federal Clean Water Act (33 U.S.C. §§ 1251 et seq.) and the Indiana Water Pollution Control Law (Indiana Code §§ 13-1 et seq.), not by RCRA or the Indiana Hazardous Waste Statute, Indiana Code § 13-7-8.5 (1988). It is the expectation of the Parties that this method of treating NSL waste will remain

in force and that IDPW's receipt and treatment of NSL Waste will continue to be regulated exclusively under the federal Clean Water Act and the Indiana Water Pollution Control Law during the entire period of implementation of the remedy.

D. If for any reason the IDPW wastewater treatment system is unavailable to receive and treat groundwater and leachate from NSL, the Settling Defendants shall, in accordance with the provisions below, immediately implement alternative measures for storage, treatment, and/or discharge of groundwater and leachate from NSL that meet all applicable or relevant and appropriate standards, and that are protective of human health and the environment.

1. Settling Defendants will continue operation of the groundwater and leachate collection system, and will implement the contingency portion of the Operation and Maintenance Plan contained in the RD Report (relating to storage, treatment and discharge of groundwater and leachate from NSL during IDPW unavailability) (see Sections 3.1 of the SOW), during any period when: (a) the IDPW sewer system is temporarily unavailable to receive and treat NSL waste (for example, as a result of power failure or heavy rain); or (b) if as provided in subparagraph D.2. below an alternative to IDPW is to be implemented, during any period prior to implementation of the alternative. Settling Defendants will provide U.S. EPA and the State prompt notice when use of the contingency portion of the Operation and Maintenance Plan is required.

2. If the IDPW sewer system is expected to be unavailable for an extended period, or permanently, to receive and treat NSL waste prior to completion of the Work, the Settling Defendants shall promptly notify U.S. EPA and the State and shall provide U.S. EPA and the State with a report that identifies and analyzes practicable alternative methods to store, treat, and discharge the groundwater and leachate from NSL. The report shall be delivered to U.S. EPA and the State within 75 days after IDPW notifies the Settling Defendants of the unavailability of the IDPW, and will include a description of these alternatives, the advantages and disadvantages of each, an estimated schedule for design and implementation of each, and identification of the alternative preferred by the Settling Defendants.

3. U.S. EPA shall, after consultation with the State, select the alternative to be implemented, and so advise the Settling Defendants, or require additional information, including evaluation of an additional alternative.

4. Upon receiving notification from U.S. EPA of the selected alternative, the Settling Defendants shall expeditiously, but within not more than 180 days, submit to U.S. EPA and the State a plan which sets forth: (a) the specifications for design, construction, and implementation of the selected alternative, and (b) a proposed schedule. Upon receipt of U.S. EPA approval, with or without modifications, Settling Defendants shall implement the approved plan.

5. The SOW shall be amended to correspond to any plan approved by U.S. EPA under this Section.

XIX.

EFFECT OF SETTLEMENT

A. The Parties agree and the Court hereby finds and concludes that this Consent Decree was negotiated in good faith by the Plaintiffs and Settling Defendants, Premium Settling Defendants and Premium Settling Government Agencies, who offered all responsible parties for the Facility an opportunity to participate in the negotiations and join in this Decree; and that the payments by Settling Defendants, Premium Settling Defendants and Premium Settling Government Agencies pursuant to this Consent Decree represent, as between Settling Defendants, Premium Settling Defendants and Premium Settling Government Agencies, a fair and equitable apportionment of the total settlement costs. Settling Defendants, Premium Settling Defendants and Premium Settling Government Agencies waive their rights to assert any claims against the Hazardous Substances Superfund under CERCLA that are related to any past costs or costs incurred in the Work performed pursuant to this Consent Decree, and nothing in this Consent Decree shall be construed as U.S. EPA's preauthorization of a claim against the Hazardous Substances Superfund.

B. With regard to claims for contribution against the Settling Defendants, Premium Settling Defendants and Premium Settling Government Agencies for matters addressed in this Consent Decree, the Parties hereto agree, and the Court hereby finds and concludes, that the Settling Defendants, Premium Settling Defendants, and Premium Settling Government Agencies, having resolved their liability to the Plaintiffs, are entitled

as of the effective date of this Consent Decree to the full measure of protection against contribution claims provided for under Sections 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and to seek reimbursement from any person who is not a Party to this Consent Decree as provided for under Sections 113(f)(3), 42 U.S.C. § 9613(f)(3), subject to the provisions of Sections 113(f)(3)(C) of CERCLA, 42 U.S.C.§ 9613(f)(3)(C).

C. Each of Arvin Industries (Roll Coater), General Motors, Hillenbrand Industries (Batesville Casket and Hill Rom) and Tricil Environmental Services, Inc. (the "Specified Settling Defendants") hereby waives the contribution protection described in Sections XIX.B above afforded under Sections 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), as to assertion of a claim by Jones Chemicals against such Specified Settling Defendant, either in this lawsuit or in a separate action, for contribution and/or indemnity with respect to Waste Material of such Specified Settling Defendant transported or alleged to have been transported by Jones Chemicals to the NSL Site and, similarly, Jones Chemicals hereby waives the contribution protection described in Sections XIX.B above afforded under Sections 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), as to assertion of a claim by each Specified Settling Defendant against Jones Chemicals, either in this lawsuit or in a separate action, for contribution and/or indemnity with respect to Waste Material of such Specified Settling Defendant transported or alleged to have been transported by Jones Chemicals to the NSL Site. All defenses to any claims reserved in this section XIX.C are

expressly preserved, including defenses available under any federal or state statutory law or common law or under this Consent Decree. This preservation does not include defenses to any such claims pursuant to 42 U.S.C. § 9613(f)(2) or those portions of Sections XIX.B and XX.A of this Consent Decree which provide that any such claims are not preserved following the effective date of this Consent Decree.

Notwithstanding anything to the contrary in this Consent Decree, including without limitation all of its Appendices, or elsewhere, the waiver of contribution protection by each of the Specified Settling Defendants and by Jones Chemicals is limited as expressly provided in this Sections XIX.C, and except as expressly provided herein, Jones Chemicals and each of the Specified Settling Defendants are entitled as of the effective date of this Consent Decree to the full measure of protection against contribution claims provided for under Sections 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

The United States and the State of Indiana are not parties to the terms set forth in this Sections XIX.C, and do not hereby endorse or express any view as to the legal effect of this paragraph under CERCLA or other applicable law.

D. The Settling Defendants, Premium Settling Defendants and Premium Settling Government Agencies agree that if any claim for contribution is brought against them, individually or collectively, the named Settling Defendant(s), Premium Settling Defendant(s) or Premium Settling Government Agency(ies) will timely notify the Plaintiffs of the institution of that claim.

If the Settling Defendants, Premium Settling Defendants or Premium Settling Government Agencies individually or collectively bring a claim for contribution against any person, the Settling Defendant(s), Premium Settling Defendant(s) or Premium Settling Government Agency(ies) will timely notify Plaintiffs of the institution of that claim.

E. Execution of this Consent Decree does not constitute an admission of liability by Settling Defendants, Premium Settling Defendants or Premium Settling Government Agencies or otherwise constitute any evidence relevant to the Third Area. Because present information indicates that the contamination of the Third Area resulted from a source other than the NSL Site, Plaintiffs agree, subject to the exception stated below, not to assert any claim or cause of action relating to the Third Area against a Settling Defendant, Premium Settling Defendant or Premium Settling Government Agency under federal or State law, including common law, the basis of which is limited to the fact that such a Settling Defendant, Premium Settling Defendant or Premium Settling Government Agency is a PRP with respect to the Facility; provided, however, that the agreement not to assert a claim under the preceding clause will not apply to a Settling Defendant, Premium Settling Defendant or Premium Settling Government Agency if U.S. EPA and/or the State determine that hazardous substances generated or transported by such Settling Defendant, Premium Settling Defendant or Premium Settling Government Agency were disposed at the Third Area or otherwise came to be located at the Third Area.

F. Except as otherwise provided by law, this Decree shall not waive, alter, or otherwise affect any order or determination relating to any owner or operator of the Facility, including but not limited to orders resulting from an adjudication of other causes of action involving Northside Sanitary Landfill, Inc. or its officers, shareholders, or directors.

XX.

COVENANTS NOT TO SUE AND SPECIAL PROVISIONS FOR PREMIUM SETTLING DEFENDANTS AND PREMIUM SETTLING GOVERNMENT AGENCIES

A. Covenants Not to Sue

Except for (1) actions relating to the failure, in whole or part, to make any payment owed pursuant to the Northside Sanitary Landfill Site Trust Fund Agreement or pursuant to the Northside Sanitary Landfill Site Sections 468B Trust Fund Agreement; (2) claims reserved in Sections XIX.C of this Consent Decree; and (3) actions arising under the Wastewater Treatment Agreement referred to in Sections XVIII.A of this Consent Decree, each Settling Defendant, Premium Settling Defendant and Premium Settling Government Agency hereby covenants not to sue any Settling Defendant, Premium Settling Defendant or Premium Settling Government Agency as to any common law claims or any other claims and causes of action whatsoever (a) based on the facts surrounding the transactions or occurrences as described in Plaintiffs' Complaint in this action, (b) relating to the Work and activities performed by the Settling Defendants in compliance with this Consent Decree, and (c) under laws or regulations, including subsequently enacted laws or regulations, administered

and enforced by the United States or the State, which have been, or could have been, asserted against each other as of the effective date of this Consent Decree, arising out of all matters which were raised, or could have been raised, relating to or arising from the Facility.

In addition, except for those claims reserved in Paragraph C below, the Plaintiffs covenant not to sue Premium Settling Defendants and Premium Settling Government Agencies with regard to any liability that could be imposed upon any of the Premium Settling Defendants and Premium Settling Government Agencies as to any future obligations or liability at the Facility, arising under any environmental statute or regulation administered by U.S. EPA or under any State environmental statute, regulation or common law doctrine, including, without limitation, any obligation to make additional contributions to the trust funds established pursuant to Sections XXIII below or to perform or finance any additional remedial action at the NSL Site not contemplated by this Consent Decree or the SOW. This Paragraph does not provide a covenant not to sue for any Premium Settling Defendant or Premium Settling Government Agency who does not make all payments, or perform work in lieu of payments, required by this Consent Decree or for any other person or entity not a Party to this Consent Decree. It is not the intention of the Parties that this Paragraph operate as a release of any Party to this litigation. This covenant does not apply to criminal liabilities.

B. Consideration

Except as noted below, the covenants not to sue contained in Paragraph A above are given in consideration of a payment to the trust fund established pursuant to Sections XXIII.B and Appendix E by each Premium Settling Defendant and Premium Settling Government Agency of the amount shown for such Premium Settling Defendant or Premium Settling Government Agency in Appendix E. Each such payment or work in lieu of payment represents the respective Premium Settling Defendant's or Premium Settling Government Agency's fair share for the remedial action to be performed pursuant to the SOW, plus a premium in consideration for the covenants not to sue given to such parties for future liability. In the case of the Indiana Department of Highways, the covenants not to sue set forth in Paragraph A above are given in consideration of the complete performance of the work set forth in Sections VI.A.2 of this Consent Decree.

C. Reservation

The covenants not to sue contained in Paragraph A above shall not apply to any claim or demand for personal injury, property damage or "toxic tort" claims of any kind or any other matter not the subject of this Consent Decree.

D. Certification

Each Premium Settling Defendant and Premium Settling Government Agency hereby certifies that, based on information currently available to it and to the best of its knowledge and belief, it is aware of no facts indicating that its volumetric

contribution of hazardous substances to the Facility was higher than the amount attributed to it in Appendix E.

E. Covenants Null and Void

In the event it is ever shown that any Premium Settling Defendant or Premium Settling Government Agency is responsible for more than the amounts of Waste Materials at the Facility listed in Appendix E, the covenants not to sue provided in Paragraph A above shall be null and void as to such Premium Settling Defendant or Premium Settling Government Agency, and such Premium Settling Defendant or Premium Settling Government Agency shall be subject instead to all the requirements and obligations of Settling Defendants set forth in this Consent Decree, including the requirements set forth in Appendix D.

F. Agreement to Terms of Trust Fund

Each Premium Settling Defendant and Premium Settling Government Agency agrees to abide by the terms of the Northside Sanitary Landfill Site Sections 468B Trust Fund Agreement referenced in Sections XXIII.B and attached to this Consent Decree as Appendix E.

G. Effective Date

The covenants not to sue provided in Paragraph A above with respect to the Premium Settling Defendants and the Premium Settling Government Agencies shall become effective upon payment to the Northside Sanitary Landfill Site Sections 468B Trust Fund, pursuant to the terms of the Agreement attached as Appendix E to this Consent Decree, of the respective Premium Settling Defendant's or Premium Settling Government Agency's payment

amount set forth in Appendix E, subject to and in accordance with the provisions of this Section, except that with respect to the Indiana Department of Highways, the covenant not to sue shall become effective upon completion of the work set forth in Sections VI.A.2 of this Consent Decree.

H. Anti-Deficiency Act

Because all actions or commitments by the Premium Settling Government Agencies are dependent upon the availability of funds appropriated by Congress, nothing in this Consent Decree, the Administrative Order on Consent referred to in this Consent Decree, or the Northside Sanitary Landfill Site Section 468B Trust Fund Agreement, shall be construed to create any obligation or require any payment by the Premium Settling Government Agencies in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, provided, however, that the protections provided to the Premium Settling Government Agencies under this Decree shall be effective as to each Premium Settling Government Agency only upon payment by that Premium Settling Government Agency to the Northside Sanitary Landfill Site Section 468B Trust Fund.

XXI.

INDEMNIFICATION; OTHER CLAIMS

A. Settling Defendants agree to indemnify, save and hold harmless U.S. EPA, the State and/or their representatives from any and all claims or causes of action arising solely from acts or omissions of Settling Defendants and/or their representatives in carrying out activities pursuant to this Consent Decree. U.S. EPA and the State shall notify Settling Defendants of any such

claims or actions promptly after receipt of notice that such a claim or action is anticipated or has been filed. U.S. EPA and the State agree, upon request by Settling Defendants, to notify a designated representative of Settling Defendants, to the extent practicable, of developments in any such action, and not to settle any such action without first providing them with an opportunity to participate.

B. U.S. EPA and the State are not to be construed as parties to, and do not assume any liability for, any contract entered into by Settling Defendants in carrying out activities pursuant to this Consent Decree.

C. Except as provided in Sections XV.A, Settling Defendants are not to be construed as parties to, and do not assume any liability for, any contract entered into by Plaintiffs in carrying out activities pursuant to this Consent Decree.

XXII.

LITIGATION AGAINST NON-SETTLORS

A. It is the policy of U.S. EPA to identify potentially responsible parties not signatories to this Consent Decree, and, subject to its prosecutorial discretion, to seek reimbursement of past response costs, and/or to take appropriate action, against such Non-Settlors pursuant to the provisions of CERCLA. Such Non-Settlors remain potentially jointly and severally liable to U.S. EPA for all response costs incurred before entry of this Consent Decree, for any additional remedial action necessary at the Facility, and for any additional response costs incurred at the Facility.

B. Before final entry of a settlement of any judicial or administrative action brought by the Plaintiffs against any viable Non-Settlors, the Plaintiffs shall provide the Settling Defendants with thirty (30) days prior notice of such proposed settlement.

XXIII.

NSL TRUST FUNDS

A. The Settling Defendants shall execute and file with the Court a signed version of the Trust Agreement attached as Appendix D to this Consent Decree establishing the NSL Site Trust Fund within forty-five (45) days of the effective date of this Consent Decree. The Trustees appointed under that Agreement shall act on behalf of the Settling Defendants in all matters relating to the conduct, management, or supervision of the Work, subject to the provisions of that Agreement and this Consent Decree. The NSL Site Trust Fund Agreement shall be construed to confer upon the Trustee all powers and authority necessary to fulfill the obligations of the Settling Defendants under this Consent Decree.

B. The Premium Settling Defendants and Premium Settling Government Agencies shall not be parties to the NSL Site Trust Fund Agreement referred to in subparagraph A above. Instead, Premium Settling Defendants and Premium Settling Government Agencies, by their signatures to this Consent Decree, agree to be fully bound by the terms of the separate Northside Sanitary Landfill Site Sections 468B Trust Fund Agreement that is attached as Appendix E to this Consent Decree.

C. Nothing in this Consent Decree constitutes approval by the United States or the State of the Northside Sanitary Landfill Site Trust Fund Agreement or the Northside Sanitary Landfill Site Sections 468B Trust Fund Agreement for any purpose other than for the purpose of implementing the requirements of this Consent Decree.

XXIV.

NOTICES

A. Whenever, under the terms of this Consent Decree, notice is required to be given, a report or other document is required to be forwarded by one Party to another, or service of any papers or process is necessitated by the dispute resolution provisions of Sections XIII above, such correspondence shall be in writing by certified mail and shall be directed to the following individuals at the addresses specified below:

As to the United States or U.S. EPA:

a. Regional Counsel
Attn: NSL Coordinator
(5CS-TUB-3)
U.S. Environmental Protection Agency
230 S. Dearborn Street
Chicago, IL 60604

b. Director, Waste Management Division
Attn: NSL Remedial Project Manager (5HS)
U.S. Environmental Protection Agency
230 S. Dearborn Street
Chicago, IL 60604

As to the State of Indiana:

a. Attorney General
State of Indiana
Attn: NSL Coordinator
Room 219 - State House
Indianapolis, IN 46204

b. Assistant Commissioner,
Indiana Department of Environmental Management
Office of Environmental Response
Attn: NSL Project Coordinator
105 South Meridian Street
P.O. Box 6015
Indianapolis, IN 46206-6015

c. Assistant Attorney General
Land & Natural Resources
Division
U.S. Department of Justice
10th & Penn. Avenue, N.W.
Washington, D.C. 20530

As to Settling Defendants:

a. Stephen E. Schrumpf, Esq.
McNeely, Sanders, Stephenson
& Phopy
Suite 400
30 East Washington Street
Shelbyville, IN 46176

b. Mr. Keith Johnson
Metalworking Lubricants
Company
25 Silverdome Industrial
Park
Pontiac, MI 48057

c. Ralph F. Hall, Esq.
Eli Lilly & Co.
Lilly Corporate Center
Indianapolis, IN 46285

If the names or addresses listed above should change, the relevant Party shall notify the other Parties in writing within fourteen (14) days of the change.

B. If not delivered by hand, any notice or submission required in this Consent Decree shall be deemed complete upon mailing.

XXV.

CONSISTENCY WITH NATIONAL CONTINGENCY PLAN

The United States and the State agree, and the Court hereby finds, that the SOW, if properly performed as set forth in Sections V and VI above, is consistent with the provisions of the National Contingency Plan (40 C.F.R. Part 300) pursuant to 42 U.S.C. § 9605, as well as with the provisions of 42 U.S.C. § 9621.

XXVI.

RESPONSE AUTHORITY

Nothing in this Consent Decree shall be deemed to limit the response authority of the United States under 42 U.S.C. § 9604 or the State under the Environmental Management Act, Ind. Code 13-7.

XXVII.

COMMUNITY RELATIONS

The Parties shall cooperate with one another in providing information to the public regarding the progress of remedial design and remedial action at the Facility. As requested by U.S. EPA or the State, Settling Defendants shall participate in the preparation of all appropriate information disseminated to the public and in public meetings which may be held or sponsored by U.S. EPA or the State to explain activities at or concerning the Facility.

XXVIII.

USE OF CONSENT DECREE

This Consent Decree was negotiated, mutually drafted, and executed by the Parties in good faith to avoid further expensive and protracted litigation and is a settlement of claims which were vigorously contested, denied and disputed as to validity and amount. The execution of this Consent Decree is not an admission of any fact or liability on any issue dealt with in the Consent Decree. Accordingly, with the exception of this proceeding and any other proceeding to enforce this Consent Decree, and with the further exception of any action or proceeding brought to assert a claim reserved in Sections XIX.C above, this Consent Decree shall

not be admissible in any judicial or administrative proceeding for use against any Party over the objection of that Party. Except as to Sections XV and XVI, it is further acknowledged, agreed and ordered that the payments made herein by the Settling Defendants, Premium Settling Defendants and Premium Settling Government Agencies are not and do not constitute penalties, fines, restitution, or monetary sanctions of any kind.

XXIX.

EFFECTIVE DATE AND TERMINATION OF CONSENT DECREE

A. Effective Date

Subject to the contingency set forth on pages 5-6 above and incorporated by reference herein permitting Settling Defendants to withdraw from this Consent Decree if the terms of the amended ROD differ materially from the proposed amended ROD, this Consent Decree shall be effective on the later of the following dates: seven (7) days after the date of its entry by the Court, or thirty (30) days after the date of adoption of the amended ROD unless, as provided on pages 5-6 above, the amended ROD necessitates modifications to the SOW and the Plaintiffs and Settling Defendants mutually agree to extend the time for modifying the SOW in accordance with the amended ROD beyond thirty (30) days, in which case the effective date of this Consent Decree will be seven (7) days after the conclusion of the extended period for modifying the SOW.

B. Certification of Completion of Remedial Action

1. When the Settling Defendants believe that the demonstration of compliance with Cleanup Standards has been made

and that construction of the cap and installation of the collection and treatment system for groundwater and leachate have been completed in accordance with the SOW, they shall submit to U.S. EPA and the State a Notification of Completion of Remedial Action as provided in Sections 2.3.3 of the SOW, and a final report, with supporting documentation, which summarizes the Work done and the Cleanup Standards achieved.

2. Certification. Upon receipt of the Notice of Completion of Remedial Action, EPA, after consultation with the State, shall review the final report and any other supporting documentation, and the remedial actions taken. EPA, after consultation with the State, shall issue a Certification of Completion of Remedial Action upon a determination that Settling Defendants have demonstrated compliance within the meaning of subparagraph B.1 above, that construction of the cap and installation of the collection and treatment system for groundwater and leachate have been completed, and that the Settling Defendants are otherwise in compliance with the requirements of this Consent Decree at the time EPA reviews the Notice of Completion of Remedial Action. If EPA does not issue the requested Certification, the dispute resolution procedures in Sections XIII of this Decree shall apply, and, pursuant to Sections XIII.C.1 and 3 of this Decree, the Court shall review EPA's action or inaction on the basis of the administrative record and shall uphold that action or inaction unless it is arbitrary and capricious or otherwise not in accordance with the law.

C. Termination

Upon the filing of EPA's Certification of Completion pursuant to the preceding paragraph, and a showing that the other terms of this Consent Decree (other than the post-termination obligations) have been complied with, this Consent Decree shall be terminated upon motion of either party. Following termination, Settling Defendants' obligations to perform post-termination monitoring, maintenance, and reporting pursuant to the SOW shall survive the termination of the Decree, and shall be enforceable by the United States by re-institution of this action or by institution of a new action. Provisions of the Consent Decree which by their nature survive the termination of

the Decree also shall be enforceable by the parties after termination of this Consent Decree.

ENTERED this _____ day of _____, 1990.

_____
U.S. District Judge

The Parties whose signatures appear below hereby consent to the terms of this Consent Decree. The consent of the United States is subject to the public notice and comment requirements of 42 U.S.C. § 9622(d)(2) and 28 C.F.R. § 50.7.

By: _____
RICHARD B. STEWART
(ACTING) Assistant Attorney General
Land & Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date: _____

By: _____
DEBORAH J. DANIELS
United States Attorney
Southern District of Indiana
U.S. Courthouse
Indianapolis, IN 46204

Date: _____

By: _____
BARBARA A. ROGERS
Attorney
Land & Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date: _____

By: _____
JAMES M. STROCK
Assistant Administrator
for Enforcement ~~and Compliance Monitoring~~
U.S. EPA

Date: August 13, 1990

By: _____
for VALDAS V. ADAMKUS
Regional Administrator
U.S. EPA Region V

Date: 3/29/90

STATE OF INDIANA

By: Linley E. Pearson
LINLEY E. PEARSON
Attorney General of Indiana

Date: March 19, 1990

By: Kathy Prosser
Commissioner
Indiana Department of
Environmental Management

Date: 3-23-90

STATE OF INDIANA

By: Linley E. Pearson
LINLEY E. PEARSON
Attorney General of Indiana

Date: March 19, 1990

By: Kathy Prosser
Commissioner
Indiana Department of
Environmental Management

Date: 3-23-90