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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. Bronson Plating Company, City of Bronson, ITT Automotive Inc., L.A. Darling Company, and Scott Fetzer Company, Defendants.	CIVIL ACTION NO. 1:99-cv-490 David W. McKeague U.S. District Judge

COPY

CONSENT DECREE

I. BACKGROUND

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

A. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the North Bronson Industrial Area Superfund Site in Bronson, Branch County, Michigan, together with accrued interest; (2)

performance of studies and response work by the defendants at OU #1 consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"); and (3) settlement of the Department of Interior's claim for Natural Resource Damages at OU #1.

B. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Michigan (the "State") on July 17, 1997 of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

C. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Fish and Wildlife Service, Department of the Interior on September 3, 1997 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee to participate in the negotiation of this Consent Decree. The trustees elected to participate in the negotiations as reflected herein.

D. The Defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any facts or any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor do they admit that the release or threatened release of hazardous substances at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

E. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on June 10, 1986, 51 Fed. Reg. 21,054.

F. In September 1988, in response to a release or a substantial threat of a release of hazardous substances at or from the Site, the State commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

G. The State completed a Remedial Investigation ("RI") Report on September 17, 1993, and the State completed a Feasibility Study ("FS") Report on May 5, 1995. The State completed a Feasibility Study Addendum in July, 1997.

H. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, MDEQ published notice of the completion of the FS and of the proposed plan for remedial action at the first operable unit ("OU #1") on August 5, 1997, in a major local newspaper of general circulation. The Michigan Department of Environmental Quality ("MDEQ") provided an opportunity for written and oral comments from the public on the proposed plan for remedial action at OU #1. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

I. The decision by MDEQ on the remedial action to be implemented at the first operable unit is embodied in a Record of Decision ("ROD"), executed on June 19, 1998, on which EPA has given its concurrence. The ROD is attached as Appendix A. The ROD includes MDEQ's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in a newspaper of general circulation, in accordance with Section 117(b) of CERCLA.

J. MDEQ is conducting a RI/FS for a second operable unit ("OU #2") at the Site. Remedial action for OU #2 may be selected in a subsequent ROD. The parties agree that this

Consent Decree does not address OU #2 and that the obligations of Settling Defendants under this Consent Decree do not include OU #2.

K. Based on the information presently available, EPA believes that the Work will be properly and promptly conducted by the Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

L. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President.

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

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

II. JURISDICTION

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

III. PARTIES BOUND

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

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

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in

this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

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

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

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

"DOI" shall mean the Department of the Interior and any successor departments or agencies of the United States.

"Eastern Lagoon Property" shall mean the real property on which the eastern lagoons are located, including the portion of the eastern lagoons underneath Bronson Plating's facility.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"First Operable Unit" or "OU #1" shall mean those areas and media impacted by contamination from the eastern and western lagoons, including County Drain #30 and groundwater underlying the lagoons, as depicted generally on the map attached as Appendix B, and exposure to groundwater contamination throughout the Site.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs after the effective date of this Consent Decree in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII (Remedy Review), IX (Access and Institutional Controls; including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XV (Emergency Response), and Paragraph 83 of Section XXI (Covenant Not to Sue by Plaintiff). Future Response Costs shall also include all Interim Response Costs.

"Institutional Controls" shall mean deed restrictions and other requirements and controls developed for one or more of the following purposes: 1) to restrict the use of groundwater at the Site; 2) to limit human or animal exposure to Waste Materials; 3) to insure non-interference with the performance of the Work; and 4) to ensure the integrity and effectiveness of the Work.

"Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

"Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between March 31, 1997 and the effective date of this Consent Decree, or (b) incurred prior to the effective date of this Consent Decree but paid after that date.

"MDEQ" shall mean the Michigan Department of Environmental Quality and any successor departments or agencies of the State. References to MDEQ shall also mean its predecessor, the Michigan Department of Natural Resources ("MDNR"), unless otherwise noted.

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

"Natural Resources" shall mean land, fish, wildlife, biota, air, water, groundwater, drinking water supplies and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States.

"Natural Resource Damages" shall mean damages, including the costs for damage assessments, recoverable by the United States under Section 107 of CERCLA for injury to, destruction of, or loss of any or all Natural Resources at OU #1.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work (SOW).

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States and the Settling Defendants.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through March 31, 1997, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section 7 of the ROD and Section II of the Statement of Work ("SOW").

"Plaintiff" shall mean the United States.

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

"Record of Decision" or "ROD" shall mean the MDEQ Record of Decision relating to the first operable unit at the Site signed on June 19, 1998, by Russell Harding, Director of the MDEQ, or his delegate, and all attachments and amendments thereto. The ROD is attached as Appendix A.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendants to implement the ROD, in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

"Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 12 of this Consent Decree and approved by EPA, and any amendments thereto.

"Remedial Design" shall mean those activities to be undertaken by the Settling Defendants to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

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

"Second Operable Unit" or "OU #2" shall mean those areas and media impacted by leakage from the industrial sewer line at the Site formerly used to carry electroplating and other industrial

wastes, including contamination which has migrated into groundwater from that industrial sewer, as depicted generally on the map attached as Appendix B.

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Settling Defendants" shall mean the Bronson Plating Company, the City of Bronson, ITT Automotive Inc., the L.A. Darling Company, and the Scott Fetzer Company.

"Generator Settling Defendants" shall mean the Bronson Plating Company, ITT Automotive Inc., the L.A. Darling Company, and the Scott Fetzer Company.

"Owner Settling Defendant" shall mean the City of Bronson.

"Site" shall mean the North Bronson Industrial Area, encompassing approximately 220 acres, located in the northern part of Bronson, Branch County, Michigan, as depicted generally on the map attached as Appendix B. The Site is divided into two operable units.

"State" shall mean the State of Michigan.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the first operable unit of the Site, as set forth in Appendix D to this Consent Decree, and any modifications made in accordance with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor retained by the Settling Defendants to supervise and direct the implementation of the Work under this Consent Decree.

"United States" shall mean the United States of America.

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

§6903(23); and (4) any "hazardous substances," "hazardous waste," "pollutant," or "solid waste" under State law.

"Western Lagoon Property" shall mean the real property on which the western lagoons are located.

"Work" shall mean all activities Settling Defendants are required to perform under this Consent Decree, except those required by Section XXV (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Settling Defendants, to reimburse response costs of the Plaintiff, and to resolve the claims for Natural Resource Damages and the other claims of Plaintiff against Settling Defendants as provided in this Consent Decree.

6. Commitments by Settling Defendants

A. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD for OU #1, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendants and approved by EPA pursuant to this Consent Decree. Settling Defendants shall also reimburse the United States for Past Response Costs, Future Response Costs, and Natural Resource Damage claims as provided in Paragraphs 53 and 54 of this Consent Decree.

B. The obligations of Settling Defendants to finance and perform the Work and to pay amounts owed the United States under this Consent Decree are joint and several. In the

event of the insolvency or other failure of any one or more Settling Defendants to implement the requirements of this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

7. Compliance With Applicable Law

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

8. Permits

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

B. The Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

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

9. Notice to Successors-in-Title

A. Within fifteen (15) days after the entry of this Consent Decree, the City of Bronson shall submit to EPA for review and approval a notice to be filed with the Register of Deeds, Branch County, State of Michigan, which shall provide notice to all successors-in-title that the Western Lagoon Property is part of OU #1, that the State of Michigan selected a remedy for OU #1 on June 19, 1998, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. Such notice shall state that the Consent Decree was entered by the United States District Court for the Western District of Michigan and shall identify the name and civil action number of this case and the date the Consent Decree was entered by the Court. The City of Bronson shall record such notice within ten (10) days of EPA's approval of the notice, and shall provide EPA with a certified copy of the recorded notice within thirty (30) days after receiving the original recorded notice from the Register of Deeds.

B. At least thirty (30) days prior to the conveyance of any interest in the Western Lagoon Property, including, but not limited to, fee interests, leasehold interests, and mortgage interests (but excluding any mortgage or security interest under which the lender will not participate in management of the Western Lagoon Property), the City of Bronson shall give the grantee written notice of (i) this Consent Decree, and (ii) any access agreement or institutional controls pursuant to Section IX (Access and Institutional Controls) which affect the Western Lagoon Property. At least fourteen (14) days prior to such conveyance, the City of Bronson shall

also give written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which the City of Bronson gave the prospective grantee the notice required by this paragraph.

C. Within fifteen (15) days after the entry of this Consent Decree, Bronson Plating shall submit to EPA for review and approval a notice to be filed with the Register of Deeds, Branch County, State of Michigan, which shall provide notice to all successors-in-title that the Eastern Lagoon Property is part of OU #1, that the State of Michigan selected a remedy for OU #1 on June 19, 1998, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. Such notice shall state that the Consent Decree was entered by the United States District Court for the Western District of Michigan and shall identify the name and civil action number of this case and the date the Consent Decree was entered by the Court. Bronson Plating shall record such notice within ten (10) days of EPA's approval of the notice, and shall provide EPA with a certified copy of the recorded notice within thirty (30) days after receiving the original recorded notice from the Register of Deeds.

D. At least thirty (30) days prior to the conveyance of any interest in the Eastern Lagoon Property including, but not limited to, fee interests, leasehold interests, and mortgage interests (but excluding any mortgage or security interest under which the lender will not participate in management of the Eastern Lagoon Property), Bronson Plating shall give the grantee written notice of (i) this Consent Decree, and (ii) any access agreement or institutional controls pursuant to Section IX (Access and Institutional Controls) which affect the Eastern Lagoon Property, or which affect the Eastern Lagoon Property as the result of a determination by

EPA made in accordance with Paragraph 26.D. At least fourteen (14) days prior to such conveyance, Bronson Plating shall also give written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which Bronson Plating gave the prospective grantee the notice required by this paragraph. When EPA determines what institutional controls (if any) are necessary for the Eastern Lagoon Property, based upon pre-design or design studies, EPA will notify Bronson Plating of such determination so that any written notice to prospective grantees may reflect this information.

E. In the event of any conveyance identified in Paragraphs 9.B or 9.D, the conveying Settling Defendant's obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls, pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, shall continue to be met by such Settling Defendant. In no event shall the conveyance release or otherwise affect the liability of the Settling Defendants to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree. Thereafter, each deed, title, or other instrument conveying an interest in the property included in OU #1 shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree. If EPA determines at any time during RD/RA (including at any time after the completion of necessary pre-design studies) that no institutional controls are required for the Eastern Lagoon Property, or that the nature of the institutional controls will change based on a

decision to contain the waste in the Eastern Lagoon Property in place, EPA will notify Bronson Plating of such determination so that any notice may reflect this information.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

10. Selection of Supervising Contractor.

A. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Work by Settling Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Within twenty (20) days after the entry of this Consent Decree, Settling Defendants shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

B. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within thirty (30) days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendants may select any contractor from that

list that is not disapproved and shall notify EPA of the name of the contractor selected within twenty-one (21) days of EPA's authorization to proceed.

C. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) hereof.

11. Remedial Design.

A. Within sixty (60) days after EPA's issuance of an authorization to proceed pursuant to Paragraph 10, Settling Defendants shall submit to EPA a work plan for the pre-design studies to be conducted at the Site (Pre-Design Studies Work Plan). The Pre-Design Studies Work Plan shall provide for the overall management strategy for performing the required pre-design work set forth in the ROD and in accordance with the SOW and, upon its approval by the EPA, shall be incorporated into and become enforceable under this Consent Decree. The Pre-Design Studies Work Plan shall include a Health and Safety Plan for all pre-design field activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120. The Pre-Design Studies Work Plan shall include plans and schedules for implementation of all pre-design activities identified in the SOW. Upon approval of the Pre-Design Studies Work Plan by EPA, Settling Defendants shall implement the pre-design studies according to the schedule in the approved Pre-Design Studies Work Plan. The findings from the pre-design studies shall be presented in a Pre-Design Studies Report. The Pre-Design Studies Report shall include the pre-

design determinations required by the SOW. The Settling Defendants shall submit the Pre-Design Studies Report according to the schedule in the approved Pre-Design Studies Work Plan.

B. Within thirty (30) days after EPA approves the Pre-Design Studies Report, Settling Defendants shall submit to EPA a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan"). The Remedial Design Work Plan shall provide for the design of the remedy for OU #1 as set forth in the ROD, in accordance with the SOW and the approved Pre-Design Studies Report, and for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree and/or the SOW. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree.

C. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) a preliminary design submittal; (2) an intermediate design submittal; and (3) a pre-final/final design submittal. In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action Work Plan.

D. Upon EPA's approval of the Remedial Design Work Plan after a reasonable opportunity for review and comment by the State, Settling Defendants shall implement the Remedial Design Work Plan. The Settling Defendants shall submit to EPA all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Defendants shall not

commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

E. The preliminary design submittal shall include the following: (1) preliminary plans, drawings and figures, including design calculations; (2) results of treatability studies and additional field sampling, if any, conducted after completion of the pre-design studies; (3) design assumptions and parameters, including design restrictions, process performance criteria, appropriate unit processes for the treatment train, and expected removal or treatment efficiencies for both the process and waste (concentration and volume); (4) proposed cleanup verification methods, including compliance with ARARs; (5) outline of required specifications; (6) proposed siting/locations of processes/construction activity; (7) expected long-term O & M requirements; (8) real estate, easement, and permit requirements; (9) a preliminary construction schedule, including contracting strategy; and (10) any other items as specified in the Remedial Design Work Plan.

F. The intermediate design submittal shall fully address all comments made to the preliminary design submittal, and shall include those elements listed for the preliminary design. The intermediate design submittal shall also include: (1) a draft Performance Standard Verification Plan; (2) a draft Construction Quality Assurance Project Plan ("CQAPP"); (3) a draft Quality Assurance Project Plan ("QAPP"); (4) a draft Health and Safety Plan; and (5) a draft Field Sampling Plan.

G. The pre-final/final design submittal shall address all comments made on the intermediate design submittal. It shall include the following: (1) a final Performance Standard Verification Plan; (2) a final CQAPP; (3) a final QAPP; (4) a final Health and Safety Plan; (5) a

final Field Sampling Plan; (6) a draft O & M Plan; (7) a Capital and O & M Cost Estimate; (8) a final Project Schedule for construction and implementation of the Remedial Action; (9) a Contingency Plan; and (10) any other items specified in the Remedial Design Work Plan. The CQAPP, which shall detail the approach to quality assurance during construction activities at OU #1, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.

12. Remedial Action.

A. Within thirty (30) days after the approval of the final design submittal, Settling Defendants shall submit to EPA a work plan for the performance of the Remedial Action at OU #1 ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plan, Settling Defendants shall submit to EPA a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

B. The Remedial Action Work Plan shall include the following: (1) the schedule for completion of the Remedial Action; (2) the method for selection of the contractor; (3) the schedule for developing and submitting other required Remedial Action plans; (4) the

methodology for implementation of the CQAPP; (5) a groundwater monitoring plan; (6) methods for satisfying permitting requirements; (7) the methodology for implementation of the O & M Plan; (8) methodology for implementation of the Contingency Plan; (9) tentative formulation of the Remedial Action team; (10) construction quality control plan (by constructor); and (11) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall include a schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of the Settling Defendants' Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

C. Upon approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the State, Settling Defendants shall implement the activities required under the Remedial Action Work Plan. The Settling Defendants shall submit to EPA all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Defendants shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

13. The Settling Defendants shall continue to implement the Remedial Action and O&M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

14. Modification of the SOW or Related Work Plans.

A. If EPA determines that modification to the Work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated in the SOW and/or such work plans. Any modification, however, may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

B. For the purposes of this Paragraph 14 and Paragraphs 49 and 50 only, the "scope of the remedy selected in the ROD" is: to achieve Performance Standards and to protect human health and the environment by excavating or covering contaminated eastern lagoon soil, dredging contaminated CD#30 sediment, depositing contaminated soil and sediment in the western lagoons, covering the western lagoon area, capturing contaminated groundwater in a french drain installed along CD#30, treating captured groundwater in a treatment wetland, discharging treated groundwater to CD#30, monitoring groundwater and surface water to assess the effectiveness of the remedy, limiting access to the western lagoon and wetland area, restricting land use within OU#1, and restricting the use of contaminated groundwater in the upper acquifer within the Site and adjacent properties if necessary.

C. If the Settling Defendants determine that a modification to the Work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary, they may propose such a modification to the EPA for its review and approval or disapproval.

D. If Settling Defendants object to any modification determined by EPA to be necessary or if EPA objects to any modification determined by the Settling Parties to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX

(Dispute Resolution), Paragraph 67 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

E. Settling Defendants shall implement any Work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

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

15. Settling Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiff that compliance with the Work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

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

A. The Settling Defendants shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Defendants shall notify the state in which the planned receiving facility is located of

major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

B. The identity of the receiving facility and state will be determined by the Settling Defendants following the award of the contract for Remedial Action construction. The Settling Defendants shall provide the information required by Paragraph 16.A as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

VII. REMEDY REVIEW

17. Periodic Review. Settling Defendants shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations. If Settling Defendants object to any studies and investigations requested by EPA, they may seek dispute resolution pursuant to Section XIX of this Consent Decree.

18. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment or that additional response actions are necessary to meet the Performance Standards, EPA may select further response actions for OU #1 in accordance with the requirements of CERCLA and the NCP.

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

20. Settling Defendants' Obligation To Perform Further Response Actions.

A. If EPA selects further response actions for OU #1, the Settling Defendants shall undertake such further response actions to the extent that (1) conditions at OU #1, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

B. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that previously unknown conditions at OU #1 or information indicate that the Remedial Action is not protective of human health or the environment, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 67 (record review).

21. Submissions of Plans. If Settling Defendants are required to perform the further response actions pursuant to Paragraph 20, they shall submit a plan for such Work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

22. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation,"

(EPA QA/R5); "Preparing Perfect Project Plans," (EPA /600/9-88/087), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan (QAPP) that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendants shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree. Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this

Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

23. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA or its authorized representatives, including the State. Settling Defendants shall notify EPA not less than fourteen (14) days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Settling Defendants to take split or duplicate samples of any samples it or its authorized representative, including the State, takes as part of the Plaintiff's oversight of the Settling Defendants' implementation of the Work.

24. Settling Defendants shall submit to EPA two (2) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree, unless EPA agrees otherwise.

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

IX. ACCESS AND INSTITUTIONAL CONTROLS

26. The City of Bronson and Bronson Plating Company shall provide for access and institutional controls as follows:

A. Commencing on the date of entry of this Consent Decree, the City of Bronson and Bronson Plating Company shall provide the United States and its representatives, including EPA and its contractors, with access at all reasonable times to the Western Lagoon Property and the

Eastern Lagoon Property, respectively, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

i. Monitoring the Work;

ii. Verifying any data or information submitted to the United States;

iii. Conducting investigations relating to contamination at or near OU #1;

iv. Obtaining samples;

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

vi. Implementing the Work pursuant to the conditions set forth in Paragraph 83 of this Consent Decree;

vii. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information);

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

ix. Determining whether OU #1 or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree.

B. Commencing on the date of entry of this Consent Decree, the City of Bronson shall refrain from using the Western Lagoon Property in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented pursuant to this Consent Decree. Such restrictions include, but are not limited to, the restrictions

set forth in the Declaration of Restrictive Covenant attached as Appendix E, unless U.S. EPA provides prior written approval to depart from these restrictions. Commencing on the date of entry of this Consent Decree, Bronson Plating shall refrain from using the Eastern Lagoon Property in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented pursuant to this Consent Decree, taking into account that EPA may require Settling Defendants to contain the sludge on the Eastern Lagoon Property in place, rather than requiring excavation and removal to the Western Lagoon Property.

C. The City of Bronson shall execute and record with the Register of Deeds of Branch County, State of Michigan, a Declaration of Restrictive Covenant running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26.A of this Consent Decree, and (ii) grants the right to enforce restrictions on land, surface water and upper acquifer groundwater use as listed in Paragraph 26.B of this Consent Decree, or other restrictions that are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The City of Bronson shall, within forty-five (45) days of entry of this Consent Decree, submit to EPA for review and approval with respect to such property a draft Declaration of Restrictive Covenant, in substantially the form attached hereto as Appendix E, that is enforceable under the laws of the State of Michigan. Within fifteen (15) days of EPA's approval and acceptance of a Declaration of Restrictive Covenant, the City of Bronson shall record the Declaration of Restrictive Covenant with the Register of Deeds of Branch County. Within thirty (30) days of receiving the original

recorded Declaration of Restrictive Covenant, the City of Bronson shall provide EPA with a certified copy of the original recorded Declaration of Restrictive Covenant showing the clerk's recording stamps.

D. EPA shall determine, based upon pre-design or design studies, what institutional controls at the Eastern Lagoon Property (if any) are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be implemented pursuant to this Consent Decree. Bronson Plating shall execute and record with the Register of Deeds of Branch County, State of Michigan, a Declaration of Restrictive Covenant running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26.A of this Consent Decree, and (ii) grants the right to enforce the land, surface water and upper aquifer groundwater use restrictions determined by EPA to be necessary. Bronson Plating shall, within forty-five (45) days of a determination by EPA under this Paragraph, submit to EPA for review and approval with respect to such property a draft Declaration of Restrictive Covenant, in substantially the form attached hereto as Appendix F, that is enforceable under the laws of the State of Michigan. Within fifteen (15) days of EPA's approval and acceptance of a Declaration of Restrictive Covenant, Bronson Plating shall record the Declaration of Restrictive Covenant with the Register of Deeds of Branch County. Within thirty (30) days of receiving the original recorded Declaration of Restrictive Covenant, Bronson Plating shall provide EPA with a certified copy of the original recorded Declaration of Restrictive Covenant showing the clerk's recording stamps.

27. If any property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Defendants, Settling Defendants shall use best efforts to secure from such persons:

A. an agreement to provide access thereto for Settling Defendants, as well as for the United States on behalf of EPA, as well as their representatives (including contractors), for the purpose of conducting any activity required by this Consent Decree including, but not limited to, those activities listed in Paragraph 26.A of this Consent Decree;

B. an agreement for such property, enforceable by the Settling Defendants and the United States, to abide by the obligations and restrictions established by Paragraph 26.B of this Consent Decree, or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree; and

C. if EPA so requests, the execution and recordation in the Register of Deeds of Branch County, State of Michigan, of an easement substantially in the form attached as Appendix G, or a Declaration of Restrictive Covenant substantially in the form attached as Appendices E and F, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26.A of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 26.B of this Consent Decree, or other restrictions that are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree.

D. If the deed restriction is in the form of an easement, the access rights and/or rights to enforce land/water use restrictions shall be granted to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) Settling Defendants and their representatives, and/or (iv) other appropriate grantees. Within the time frame provided in the approved Final Remedial Design, Settling Defendants shall submit to EPA for review and approval with respect to such property:

> i. A draft easement, in substantially the form attached hereto as Appendix G, that is enforceable under the laws of the State of Michigan, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and
>
> ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

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

28. For purposes of Paragraph 27 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, and/or restrictive easements, where the circumstances warrant such payment in EPA's judgment. If any access or land/water use restriction agreements required by Paragraphs

27.A or 27.B of this Consent Decree are not obtained within the time period provided in the approved Final Remedial Design, or any access easements, restrictive easements or Declarations of Restrictive Covenants required by Paragraphs 27.C or 27.D of this Consent Decree are not submitted to EPA in draft form within the time period provided in the approved Final Remedial Design, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 27 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements or Declarations of Restrictive Covenants running with the land, or by pursuing its enforcement authorities related thereto to obtain a court order granting access or land/water use restrictions. Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access and/or land/water use restrictions including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

29. If EPA determines that restrictions on use of land, surface water, or upper aquifer groundwater in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA's efforts to secure such governmental controls.

30. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions,

including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

31. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA two (2) copies of written monthly progress reports that: (a) describe the actions taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Defendants shall submit these progress reports to EPA by the tenth day of every month following the entry of this Consent Decree until EPA notifies the Settling Defendants pursuant to Paragraph 50.B of Section XIV (Certification of Completion). If requested by EPA, Settling Defendants shall also provide

briefings for EPA to discuss the progress of the Work, which briefings may be conducted in person or by conference call as appropriate.

32. The Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven (7) days prior to the performance of the activity.

33. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 5, United States Environmental Protection Agency, of the occurrence of the event. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

34. Within twenty (20) days of the onset of such an event, Settling Defendants shall furnish to Plaintiff a written report, signed by the Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

35. Settling Defendants shall submit two copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans.

36. All reports and other documents submitted by Settling Defendants to EPA (other than the monthly progress reports referred to above) that purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendants.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

37. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall in writing: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendants at least one notice of deficiency and an opportunity to cure within twenty (20) days or such longer time as specified by EPA, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration evidence a bad faith lack of effort to submit an acceptable deliverable.

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

39. A. Upon receipt of a notice of disapproval pursuant to Paragraph 37(d), Settling Defendants shall, within thirty (30) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 40 and 41.

B. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 37(d), Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission which does not require prior or simultaneous performance of the portion of the Work that is the subject of the notice of deficiency, as determined by EPA. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

40. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute Resolution).

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

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

XII. PROJECT COORDINATORS

43. Within twenty (20) days of entry of this Consent Decree, Settling Defendants and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendants' Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

44. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

45. Within 30 days of entry of this Consent Decree, Settling Defendants shall establish and maintain financial security in the amount of $4,000,000 in one or more of the following forms:

(a) A surety bond guaranteeing performance of the Work;

(b) One or more irrevocable letters of credit equaling the total estimated cost of the Work;

(c) A trust fund;

(d) A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Defendants;

(e) A demonstration that one or more of the Settling Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f); or

(f) A demonstration that one or more Settling Defendants possess sufficient net worth to complete the Work, as evidenced by audited financial statements (including Form 10K) determined by EPA to show sufficient net worth.

46. If the Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 45(d) of this Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 45(d) or (e), they shall resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA

determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendants shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 45 of this Consent Decree. Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

47. If Settling Defendants can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 45 above after entry of this Consent Decree, Settling Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Settling Defendants shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Settling Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

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

XIV. CERTIFICATION OF COMPLETION

49. Completion of the Remedial Action

A. Within ninety (90) days after Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained for OU #1, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, EPA, and any authorized representative of EPA, including the State. If, after the pre-certification inspection, the Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit to EPA for approval a written report requesting certification pursuant to Section XI (EPA Approval of Plans and Other Submissions) within thirty (30) days of the inspection. In the report, a registered professional engineer and the Settling Defendants' Project Coordinator (who may be the same person as the registered professional engineer) shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

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

If after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this

Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards. Provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.B. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

B. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved for OU #1, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiff). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree.

50. <u>Completion of the Work</u>

A. Within ninety (90) days after Settling Defendants conclude that all phases of the Work (including O & M) for OU #1 have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, EPA and any authorized representative of EPA, including the State. If, after the pre-certification inspection, the Settling Defendants still believe that the Work has been fully performed, Settling Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

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

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Work. Provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.B. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendants to submit a schedule to EPA for approval pursuant to

Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

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

XV. EMERGENCY RESPONSE

51. In the event of any action or occurrence during the performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 52, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendants shall notify the EPA Emergency Response Branch, Region 5. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendants shall reimburse EPA all costs of the response

action not inconsistent with the NCP pursuant to Section XVI (Reimbursement of Response Costs).

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

XVI. REIMBURSEMENT OF RESPONSE COSTS

53. A. Within forty-five (45) days of the effective date of this Consent Decree, the Generator Settling Defendants shall pay $1,511,040.88, and the City of Bronson shall pay the amount of $118,074 in accordance with the payment schedule attached as Appendix C, to the EPA Hazardous Substance Superfund in reimbursement of Past Response Costs, by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 1999V00277 _____, the EPA Region and Site/Spill ID number 05-1C, and DOJ case number 90-11-2-1311. Settling Defendants' obligation to reimburse Past Response Costs under this Consent Decree shall be limited to the payments required under this Paragraph. Payment shall be made in accordance with any additional instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Western District of Michigan following entry of the Consent Decree. Any payments received by the Department of Justice

after 4:00 P.M. (Eastern Time) will be credited on the next business day. Settling Defendants shall send notice that such payment has been made to the United States as specified in Section XXVI (Notices and Submissions) and to:

Cyprian Ejiasa, Regional Comptroller
U.S. EPA, Region 5 (MF-10J)
77 W. Jackson Blvd
Chicago, IL 60604

Alan Walts, Assistant Regional Counsel
U.S. EPA, Region 5 (C-14J)
77 W. Jackson Blvd
Chicago, IL 60604

B. Within thirty (30) days of the effective date of this Consent Decree, Generator Settling Defendants shall pay to the U.S. Department of the Interior (DOI) $100,000, plus attorneys' fees in the amount of $4,740.45, in settlement of Natural Resource Damages claims associated with OU #1. Settling Defendants shall make payment to the DOI Natural Resource Damage Assessment and Restoration Fund (NRDAR) either by the Department of Treasury's Automated Clearing House/Remittance Express, or the Electronic Funds Transfer ("EFT" or wire transfer) procedure. The transfer should reference "Account number 14X5198 (NRDAR)," Agency location code 14010001, "North Bronson Industrial Site, Bronson, MI, OU #1," and a list of the Settling Defendants. Payment shall be made in accordance with any additional instructions provided to the Settling Defendants by DOI following entry of the Consent Decree. Any payments received after 4:00 P.M. Eastern Time will be credited on the next business day. Settling Defendants shall send notice that such payment has been made to the United States as specified in Section XXVI (Notices and Submissions) and to:

Mary Lynn Taylor, Attorney Advisor
Office of the Solicitor
U.S. Department of the Interior
Three Parkway Center, Suite 385
Pittsburgh, PA 15220.

C. As an alternative to payment under Paragraph 53.B, Settling Defendants may agree to conduct compensatory restoration, to pay oversight and assessment costs of $8,334.41, and to pay attorneys' fees of $4,740.45. If Settling Defendants select this alternative, Settling Defendants shall develop a Restoration Plan which is acceptable to DOI. The Restoration Plan shall describe the restoration or replacement habitat in compensation of Natural Resource Damages, to be acquired within the State of Michigan and consist of 20 acres, more or less. At DOI's sole discretion, DOI may accept reduced acreage as part of a Restoration Plan. The Restoration Plan shall be provided to DOI within thirty (30) days of the effective date of this Consent Decree. DOI will review and approve or disapprove the Restoration Plan. If DOI disapproves the Restoration Plan, Settling Defendants will have thirty (30) days to make any necessary revisions and to submit a final Restoration Plan. If DOI does not approve the final Restoration Plan, Settling Defendants agree to make payment under Paragraph 53.B; except that DOI may, in its discretion, provide Settling Defendants with a further opportunity to correct deficiencies in the Restoration Plan before demanding payment under Paragraph 53.B.

54. Generator Settling Defendants shall reimburse the EPA Hazardous Substance Superfund for all Future Response Costs not inconsistent with the National Contingency Plan. The United States will send Generator Settling Defendants on a bi-monthly basis a bill requiring payment that includes an Itemized Cost Summary with direct and indirect costs incurred by EPA,

DOJ, and their contractors. Generator Settling Defendants shall make all payments within sixty (60) days of Generator Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 55. The Generator Settling Defendants shall make all payments required by this Paragraph either through an wire transfer in accordance with the procedure described in paragraph 53, or in the form of a check or checks made payable to "EPA Hazardous Substance Superfund" and referencing the EPA Region and Site/Spill ID #05-1C, the DOJ case number 90-11-2-1311, and the name and address of the party making payment. The Generator Settling Defendants shall send the check(s) to:

United States Environmental Protection Agency Region V
Attention: Superfund Accounting
Regional Superfund Lockbox
P.O. Box 70753
Chicago, Illinois 60673;

and shall send copies of the check(s) to the United States as specified in Section XXVI (Notices and Submissions) and to:

Cyprian Ejiasa, Regional Comptroller
U.S. EPA, Region 5 (MF-10J)
77 W. Jackson Blvd
Chicago, IL 60604

Alan Walts, Assistant Regional Counsel
U.S. EPA, Region 5 (C-14J)
77 W. Jackson Blvd
Chicago, IL 60604.

55. Generator Settling Defendants may contest payment of any Future Response Costs under Paragraph 54 if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be

sent to the United States pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Generator Settling Defendants shall within the 30-day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 54. Simultaneously, the Generator Settling Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within five (5) days of the resolution of the dispute, the Generator Settling Defendants shall pay the sums due (plus Interest accrued under Paragraph 56) to the United States in the manner described in Paragraph 54. If the Generator Settling Defendants prevail concerning any aspect of the contested costs, the Generator Settling Defendants shall pay that portion of the costs (plus associated Interest accrued under Paragraph 56) for which they did not prevail to the United States in the manner described in Paragraph 54. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

56. In the event that any payments required by Paragraph 53 are not made within forty-five (45) days of the effective date of this Consent Decree or any payments required by Paragraph 54 are not made within sixty (60) days of the Settling Defendants' receipt of the bill, Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs under this Paragraph shall begin to accrue forty-five (45) days after the effective date of this Consent Decree. The Interest on Future Response Costs shall begin to accrue sixty (60) days after the Settling Defendants' receipt of the bill. The Interest shall accrue through the date of the

Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to make timely payments under this Section. With regard to EPA, the Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 54. With regard to DOI, the Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 53.B.

XVII. INDEMNIFICATION AND INSURANCE

57. A. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendants agree to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United

States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States.

B. The United States shall give Settling Defendants prior notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 57.A, and shall consult with Settling Defendants prior to settling such claim.

58. Settling Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays except for those claims covered by the terms of Paragraph 86 of this Consent Decree.

59. No later than fifteen (15) days before commencing any on-site Work, Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 49.B of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of $4 million dollars, combined single limit, and automobile liability insurance with limits of $1 million dollars, combined single limit, naming the United States as an additional insured. In addition, for the

duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree or provide acceptable evidence of the continued applicability of such policies. If Settling Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

60. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest

extent possible. "Force majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

61. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 5, within five (5) days of when Settling Defendants first knew that the event might cause a delay based on the known facts or circumstances or facts and circumstances that should have been known to Settling Defendants. Within ten (10) days thereafter, Settling Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which Settling

Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

62. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

63. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 60 and 61, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

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

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

66. A. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within twenty (20) days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 67 or Paragraph 68.

B. Within twenty (20) days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not

limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 67 or 68. Within fifteen (15) days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

C. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 67 or 68, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 67 and 68.

67. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions.

A. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to

this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

B. The Director of the Superfund Division, EPA Region 5, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 67.A. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 67.C and D.

C. Any administrative decision made by EPA pursuant to Paragraph 67.B shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within twenty (20) days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

D. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 67.A.

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

A. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 66, the Director of the Superfund Division, EPA Region 5, will issue a

final decision resolving the dispute. The Superfund Division Director's decision shall be binding on the Settling Defendants unless, within twenty (20) days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

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

69. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 78. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

70. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 71 and 72 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

71. A. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph B:

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	Days 1-14
$1,500	Days 15-30
$3,000	Days 31+

B. The stipulated penalties in Paragraph 71.A shall accrue for any stage of remedial action that is not completed by the date scheduled in any work plan or other schedule reviewed and approved by EPA.

72. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Sections V through XV:

Penalty Per Violation Per Day	Period of Noncompliance
$500	Days 1-14
$1,000	Days 15-30
$1,500	Days 31 -60
$2,500	Days 61+

73. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 83 of Section XXI (Covenants Not to Sue by Plaintiff), Settling Defendants shall be liable for a stipulated penalty in the amount of $100,000.

74. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Superfund Division, EPA Region 5, under Paragraph 65.B or 66.A of Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, upon the filing with the Court of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree arising from separate acts or circumstances.

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

76. All penalties accruing under this Section shall be due and payable to the United States within thirty (30) days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by check(s) made payable to "EPA Hazardous Substances Superfund," and shall be mailed to:

United States Environmental Protection Agency Region V
Attention: Superfund Accounting
Regional Superfund Lockbox
P.O. Box 70753
Chicago, Illinois 60673.

Each check shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #05-1C, the DOJ Case Number 90-11-2-1311, and the name and address of the party or parties making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVI (Notices and Submissions), and to:

Karen Vasquez, Acting Regional Controller
U.S. EPA, Region 5 (MFF-10J)
77 W. Jackson Blvd
Chicago, IL 60604

Alan Walts, Assistant Regional Counsel
U.S. EPA, Region 5 (C-14J)
77 W. Jackson Blvd
Chicago, IL 60604

77. The payment of penalties shall not alter in any way Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

78. Penalties shall continue to accrue as provided in Paragraph 74 during any dispute resolution period, but need not be paid until the following:

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

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

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

79. A. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 75.

B. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

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

XXI. COVENANTS NOT TO SUE BY PLAINTIFF

81. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 82, 83, and 84 of this Section, the United States covenants not to sue or to take administrative action against Generator Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA for performance of the Work at OU #1, for recovery of Past Response Costs, Interim Response Costs, and Future Response Costs, and for recovery of Natural Resource Damage Claims at OU #1. Based upon Owner Settling Defendant's limited

ability to pay, the United States covenants not to sue or to take administrative action against Owner Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA relating to the Site, except as to the following performance of Work at OU #2: (1) to the extent necessary to address the presence of contaminated groundwater in or emanating from OU#2, enactment of an ordinance to restrict the use of contaminated groundwater within the City, in a form approved by EPA; and (2) Operation and Maintenance activities that are similar in nature to the activities to be performed by the City for OU #1. With respect to performance of the Work, these covenants not to sue as to Settling Defendants shall take effect upon Certification of Completion of Work by EPA pursuant to Paragraph 50 of Section XIV (Certification of Completion). With respect to recovery of Past Response Costs, Interim Response Costs and Future Response Costs, these covenants not to sue as to Settling Defendants shall take effect upon the receipt by EPA of the payments required by Section XVI (Reimbursement of Response Costs). With respect to claims for Natural Resource Damages, these covenants not to sue as to Settling Defendants shall take effect upon payment to DOI of Natural Resource Damage settlements required by Paragraph 53.B of Section XVI (Reimbursement of Response Costs), or completion of work under the Restoration Plan and payments required by Paragraph 53.C of Section XVI, and payment of any amount due to DOI under Paragraph 56 of Section XVI. These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

82. General reservations of rights.

A. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 81. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following:

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

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of OU #1;

(3) liability for future disposal of Waste Material at the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA;

(4) criminal liability;

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

(6) as to Settling Generator Defendants, liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards for OU #1, but that cannot be required pursuant to Paragraph 14 (Modification of the SOW or Related Work Plans); and

(7) liability for additional operable units at the Site, including any response action taken with regard to the second operable unit.

B. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings against Generator Settling Defendants seeking recovery of Natural Resource Damages based on:

(1) conditions with respect to the Site, previously unknown to the federal trustee, that are discovered, and that result in the release of hazardous substances that contribute to injury to, destruction of, or loss of said natural resources at the Site, or

(2) information, previously unknown to the federal trustee, which demonstrates that there is injury to, destruction of, or loss of natural resources of a type that was unknown, or of a magnitude substantially greater than was known, to the federal trustee.

C. For purposes of Paragraph 82.B, the information and conditions known to the federal trustee shall include only that information and conditions known to EPA or the federal trustee as of the effective date of this Consent Decree as set forth in the administrative record supporting the Response Action.

83. Work Takeover In the event EPA determines that Settling Defendants have ceased implementation of any portion of the Work in the absence of Settling Defendants invoking Dispute Resolution with respect to that portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing or failing to implement the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 67, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this

Paragraph shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVI (Reimbursement of Response Costs), except to the extent that Settling Defendants prevail in Dispute Resolution.

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

XXII. COVENANTS BY SETTLING DEFENDANTS

85. Covenant Not to Sue. Subject to the reservations in Paragraph 82, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Work, past response actions, Institutional Controls, Natural Resource Damages, and Past and Future Response Costs as defined herein or this Consent Decree, including, but not limited to:

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

B. any claims arising out of response activities at OU #1, including claims based on EPA's and the State's selection of response actions, oversight of response activities or approval of plans for such activities.

86. The Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United

States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

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

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

88. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Each of the Parties expressly reserves any and all rights including, but not limited to, any right to contribution, defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

89. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2)

for matters addressed in this Consent Decree. As to Generator Settling Defendants, the "matters addressed" in this Consent Decree are Past Costs, Interim Costs, Future Costs, Natural Resource Damages, and the performance of Work under this Consent Decree including RD/RA for OU #1 and Institutional Controls for the Site and adjacent or nearby property if necessary. As to Owner Settling Defendant, the "matters addressed" in this Consent Decree are all costs relating to the Site and the performance of Work under this Consent Decree including RD/RA for OU #1 and Institutional Controls for the Site and adjacent or nearby property if necessary, and including performance of Work for OU #2 except as described in Paragraph 81. The "matters addressed" in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree, other than claims for failure to comply with this Decree in the event that the United States asserts rights against Settling Defendants coming within the scope of such reservations.

90. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.

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

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

XXIV. ACCESS TO INFORMATION

93. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. To the extent within their control, Settling Defendants shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

94. A. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality

accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants, except as otherwise provided under the procedures specified in 40 C.F.R. Part 2, Subpart B.

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

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

XXV. RETENTION OF RECORDS

96. Until ten (10) years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 50.B of Section XIV (Certification of Completion), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until ten (10) years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 50.B of Section XIV (Certification of Completion), Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

97. At the conclusion of this document retention period, Settling Defendants shall notify the United States at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall deliver any such records or documents to EPA. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law or constitute attorney work-product. If the Settling Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no

documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

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

XXVI. NOTICES AND SUBMISSIONS

99. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Defendants, respectively.

As to the United States:

Benjamin Fisherow
Assistant Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DJ # 90-11-2-1311

and

William Muno
Director, Superfund Division
United States Environmental Protection Agency
Region 5
77 W. Jackson Blvd
Chicago, IL 60604

As to EPA:

Rosita Clarke-Moreno
EPA Project Coordinator
United States Environmental Protection Agency
Region 5
77 W. Jackson Blvd
Chicago, IL 60604

As to Michigan:

Deborah Larsen
MDEQ-ERD
Superfund Section
PO Box 30426
Lansing, MI 48909-7926

As to the Settling Defendants:

Michael Maierle, P.E.
Principal Engineer
ARCADIS Geraghty & Miller, Inc.
126 North Jefferson Street, Suite 400

Milwaukee, Wisconsin 53202

Susan M. Franzetti, Esq.
Gardner, Carton & Douglas
Suite 3400-Quaker Tower
321 North Clark St.
Chicago, IL 60610-4795

XXVII. EFFECTIVE DATE

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

XXVIII. RETENTION OF JURISDICTION

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

XXIX. APPENDICES

102. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the ROD.

"Appendix B" is the map of the Site.

"Appendix C" is the payment schedule for the City of Bronson.

"Appendix D" is the Statement of Work.

"Appendix E" is the model Declaration of Restrictive Covenant for the City of Bronson.

"Appendix F" is the model Declaration of Restrictive Covenant for Bronson Plating Company.

"Appendix G" is the model easement.

XXX. COMMUNITY RELATIONS

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

XXXI. MODIFICATION

104. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Settling Defendants. All such modifications shall be made in writing.

105. Except as provided in Paragraph 14 ("Modification of the SOW or related Work Plans"), no material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after

providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendants.

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

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

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

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

XXXIII. EPA STATEMENT OF INTENT ON RISK-SHARING OF INNOVATIVE TECHNOLOGY

109. The EPA Office of Solid Waste and Emergency Response, in conjunction with the EPA Office of Enforcement and Compliance Assurance, has accepted the North Bronson Industrial Area Site into the innovative technology risk-sharing program in accordance with the 'Guidance on Innovative Technology Risk Sharing,' OSWER Dir. 9010.02 ("Risk-Sharing Guidance"). Subject to the limitations specified in this Section, if:

A. EPA and the Settling Defendants agree, pursuant to the SOW, that the wetland treatment system selected by the ROD ("innovative remedy") will not meet and maintain the Performance Standards pertaining to the wetland treatment system, or EPA determines, pursuant to the SOW, that the wetland treatment system selected by the ROD does not meet and maintain the Performance Standards pertaining to the wetland treatment system; or EPA determines pursuant to Section V.C of the Risk-Sharing Guidance that the innovative remedy has failed due to excessive costs, exceedance of effluent limits or other criteria; and

B. EPA requires the Settling Defendants to implement and the Settling Defendants actually implement an alternative groundwater recovery and treatment system or any portion of it under this Consent Decree ("alternative remedy"),

EPA intends to preauthorize, at that time, the Work Settling Defendants to submit claims against the Fund for work performed on the alternative remedy in an amount not to exceed $1,164,000, which represents 50% of the estimated capital and O&M costs of the innovative remedy. At the time of preauthorization, EPA may reduce the reimbursement amount based upon documentation provided by the Settling Defendants at that time pursuant to Paragraph 110. EPA's intention to preauthorize the Settling Defendants is subject to the funding limitations set forth in the Risk-Sharing Guidance. Preauthorization and reimbursement shall be governed by the CERCLA claims procedures set forth at 40 C.F.R. part 307. EPA's intention to preauthorize the submission of claims against the Fund will be nullified by unreasonable delays, as determined by EPA, by the Settling Defendants in implementing the innovative remedy. EPA's determination of unreasonable delay will be with reference to any relevant schedule in an approved Work Plan or other relevant schedule under the Consent Decree.

110. Within 30 days of notice of a decision to implement the alternative remedy, as described above in Paragraph 109, the Settling Defendants shall provide EPA documentation of the actual and necessary costs expended solely in the performance of work on the innovative remedy, as provided in Section V.E of the Risk-Sharing Guidance. The reimbursement level for such documented costs shall in no event exceed $1,164,000. However, based upon a review of this documentation, EPA may reduce the reimbursement level to reflect 50% of the actual costs expended by Settling Defendants, in the event preauthorization occurs.

111. The Settling Defendants shall submit an application, consistent with 40 C.F.R. Part 307, for preauthorization to submit claims against the Fund for costs incurred in performance of the alternative remedy within 30 days of EPA's written acceptance of the cost documentation required by Paragraph 110.

112. Nothing in this Section shall affect the Settling Defendants' obligation, if required pursuant to any modification to the Consent Decree, to design and implement the alternative remedy in a timely fashion. Settling Defendants shall not postpone or delay the design or implementation of any Work under this Consent Decree pending the commencement or completion of any application process for EPA funds under this Section.

113. In the event that the treatment wetland system is constructed at the Site, the Settling Defendants shall submit an 'Innovative Technology Cost and Performance Report" for EPA review and approval or modification, consistent with Section XI of the Consent Decree. This report shall be submitted either as part of the completion of remedial action report pursuant to Paragraph 49, or within 120 days of any agreement or notice of EPA's determination to implement an alternative groundwater recovery and treatment system, whichever occurs first.

This report shall document the cost and performance (including inadequacies or failure of performance) of the treatment wetland system and any enhancements or alterations to the system.

XXXIV. SIGNATORIES/SERVICE

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

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

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

SO ORDERED THIS ____ DAY OF _____, 1999.

_____

United States District Court Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Bronson Plating et al., relating to the North Bronson Industrial Area Superfund Site in Bronson, Michigan.

FOR THE UNITED STATES OF AMERICA

Date: June 14, 1999

Bruce S. Gelber
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

David S. Christensen
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
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Robert Springer
for David Ullrich
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Alan Walts
Alan Walts
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Bronson Plating et al., relating to the North Bronson Industrial Area Superfund Site.

For: Bronson Plating Company, Inc.

Date: 3-17-99

Stanley R Welch, Pres.

Stanley R Welch

[Name -- Please Type]

President

[Title -- Please Type]

P.O. Box 69

[Address -- Please Type]

Bronson, MI 49028

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

Name:	Christopher J. Dunsky (P13031)
Title:	Attorney for Bronson Plating Company
Company:	Honigman Miller Schwartz and Cohn 2290 First National Bldg. Detroit, Michigan 48226
Telephone:	313-465-7364

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Bronson Plating et al., relating to the North Bronson Industrial Area Superfund Site.

FOR City of Bronson ~~COMPANY, INC~~

Date: 03-18-1999

David J. O'Rourke

[Name -- Please Type]

City Manager

[Title -- Please Type]

141 S. Matteson St.
Bronson, MI 49028

[Address -- Please Type]

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

Name: Karen A. Smith
Title: City Clerk
Address: 141 S. Matteson St., Bronson, MI 49028
Tel. Number: (517) 369-7334

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Bronson Plating et al., relating to the North Bronson Industrial Area Superfund Site.

FOR ITT Automotive COMPANY, INC.

Date: 3/18/1999

Usha Wright

Usha Wright
[Name -- Please Type]

V.P. & Associate General Counsel
[Title -- Please Type]

4 West Red Oak Lane
White Plains, NY 10604

[Address -- Please Type]

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

Name: David L. Tripp
Title: Attorney for ITT Automotive, Inc.
Address: Dykema Gossett, 400 Renaissance Ctr., Detroit, MI 48243
Tel. Number: 313-568-6748

THE UNDERSIGNED PARTY enters into this Consent Decree in the *matter of United States v. Bronson Plating et al., relating* to the North Bronson Industrial Area Superfund Site.

FOR L. A. DARLING COMPANY

Date: March 17, 1999

R. C. Gluth
[Name -- Please Type]

Vice President and Treasurer
[Title -- Please Type]

L. A. Darling Company
c/o The Marmon Group, Inc.
225 W. Washington Street
Chicago, IL 60606
[Address -- Please Type]

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

Name: The United States Corporation Company
Ms. Sonya L. Cordell
Address: 1013 Centre Road, Wilmington, DE 19805-1297
Tel. Number: 800-927-9800

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Bronson Plating et al., relating to the North Bronson Industrial Area Superfund Site.

FOR THE SCOTT FETZER COMPANY ~~INC.~~

Date: MARCH 15, 1999

Timothy S. Guster

[Name -- Please Type]

Vice President & General Counsel

[Title -- Please Type]

28800 Clemens Road
Westlake, Ohio 44145

[Address -- Please Type]

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

Name: Timothy S. Guster
Title: Vice President & General Counsel
Address: 28800 Clemens Road, Westlake, Ohio 44145
Tel. Number: 440-892-3000

APPENDIX A

RECORD OF DECISION