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UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 2.4
Eastern Division

USA

Plaintiff,

v.

Case No.: 1:88–cv–08571
Hon. Charles R. Norgle Sr

Outboard Marine Corporation, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, June 23, 2005:

MINUTE entry before Judge Charles R. Norgle Sr.:United States' unopposed motion to enter proposed supplemental consent decree [164] is granted.Mailed/telephoned notice(ewf,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE UNITED STATES OF AMERICA, and PEOPLE OF THE STATE OF ILLINOIS, Plaintiffs, v. OUTBOARD MARINE CORPORATION, Defendant, and THE CITY OF WAUKEGAN, ILLINOIS, Defendant-Intervenor.	CIVIL ACTION NO. 88-C-8571 JUDGE CHARLES R. NORGLE, SR.

SUPPLEMENTAL CONSENT DECREE

I. INTRODUCTION

A. This Supplemental Consent Decree ("Supplemental Consent Decree") in this action is made and entered into by and among the United States of America on behalf of the United States Environmental Protection Agency ("EPA"), the State of Illinois through the Attorney General of the State of Illinois and on behalf of the Illinois Environmental Protection Agency ("Illinois EPA"), and the City of Waukegan, Illinois, an Illinois municipal corporation ("City of Waukegan") (collectively, the "Settling Parties").

B. The purpose of this Supplemental Consent Decree is to settle and resolve, subject to the reservations and limitations contained in Sections XIV (Certification), XV (United States' and State's Covenants Not to Sue), XVI (Reservations of Rights), and XVII (The City of Waukegan's Covenant Not to Sue) of this Supplemental Consent Decree, any potential liability of the City of Waukegan and its successors, assigns and transferees for the Existing Contamination (as defined hereafter) at the Site which may otherwise result under CERCLA, excluding natural resource damages, RCRA, TSCA, CWA, the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*, Section 13 of the River and Harbors Act of 1899, 33 U.S.C. §407, the Illinois Public Nuisance Act, 415 ILCS 5/47-5 *et. seq.* and common law nuisance, from the City of Waukegan becoming the owner of the Property and taking other actions with respect to the Property.

C. In 1989, the United States and the State of Illinois filed complaints against the Outboard Marine Corporation ("OMC") pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, *et seq.*, in the District Court for the Northern District of Illinois in connection with releases of polychlorinated biphenyls ("PCBs") at the Waukegan Harbor Superfund Site (the "Site" or the "OMC Site").

D. On or about May 1, 1989, a Consent Decree and Order of the District Court was entered in this matter captioned: *United States of America and People of the State of Illinois v. Outboard Marine Corporation, Inc. ("OMC")*, Civil Action No. 88-C-8571 (N.D. Ill.) ("Consent Decree"), among the United States, the State of Illinois and OMC.

E. Pursuant to the terms of the Consent Decree, OMC is required to perform certain

response actions, including, but not limited to, the remediation of specified sediment and submerged land resources at the OMC Site and the design, construction and operation and maintenance ("O&M") of PCB Impoundments to be undertaken in accordance with the Consent Decree, the Remedial Action Plan ("RAP"), and other plans and schedules required by the Consent Decree at the Site.

F. Pursuant to the terms of the Consent Decree, OMC completed construction in 1995 of the required design, remediation and restoration activities to address PCB contamination in the Waukegan Harbor, lagoons, ditches and other areas around parts of the Site.

G. As part of the remediation under the Consent Decree, OMC constructed three containment cells – or PCB Impoundments – at the Site designed to store PCB-contaminated sediments and soils. The containment cells contained groundwater extraction systems which are connected to a water treatment system that removes PCBs from the water taken from the containment cells.

H. The operation and maintenance ("O&M") requirements specified in the Consent Decree and the O&M Plan require OMC, among other things, to operate the groundwater extraction systems in order to maintain an inward hydraulic gradient within each cell to prevent the migration of PCBs from the cells. The PCB Impoundments were designed to last a minimum of 30 years provided that they are properly operated and maintained. OMC conducted the O&M requirements until on or about January 1, 2001.

I. OMC filed for bankruptcy under chapter 11 of the Bankruptcy Code on December 22, 2000 (Case No. 00-37405). The case converted to chapter 7 on August 20, 2001, and on or about August 23, 2001, a Trustee was appointed by the Bankruptcy Court.

J. On April 11, 2001, the City of Waukegan served OMC with notice of the City's intent to commence an action under the citizen suit provisions of the Resource Conservation and Recovery Act and Toxic Substances Control Act. The City's Notice of Intent to Sue asserted environmental conditions at the Site, including groundwater contamination and leaking underground storage tanks, presented an "imminent and substantial endangerment" to the environment and public health.

K. On or about May 3, 2002, the United States and the State of Illinois filed an adversary proceeding complaint (amended on July 16, 2002) (*United States of America and*

People of the State of Illinois v. Alex D. Moglia, Adv. Pro. No. 02A00577 (Bankr. N.D. Ill)) (the "Adversary Proceeding") in the OMC bankruptcy proceedings against the Trustee seeking injunctive relief for violations of CERCLA, RCRA and State statutes and regulations at the OMC Site and for failure to comply with the requirements of the Consent Decree. On January 2, 2003, the adversary proceeding was removed to the federal District Court (Case No. 02-CV-6131). To date, no decision has been rendered by the District Court. OMC and the Trustee continue to fail to comply with the O&M requirements of the Consent Decree.

L. The Trustee abandoned certain property of the estate (the "Property"), commonly known as Plant 2, located at or near 90-100 Seahorse Drive in Waukegan, Illinois, and the three PCB Impoundments constructed by OMC, pursuant to order of the Bankruptcy Court entered December 10, 2002, and pursuant to the terms and conditions of a prior Settlement Agreement among the Trustee, the United States and the State of Illinois entered by the Bankruptcy Court on July 19, 2002. Under that Settlement Agreement, the United States and State of Illinois reserved all rights to contend that the injunctive relief sought in the Adversary Proceeding survives abandonment; and the Trustee reserved all rights to contend that it has no liability for injunctive relief after abandonment.

M. The abandonment of the Property by the Trustee presents practical problems at the Site and Property for the City of Waukegan, the EPA and the Illinois EPA due, *inter alia,* to the absence of security, the potential existence of a public nuisance, the potential exacerbation of Existing Contamination, and the frustration of the Brownfields redevelopment objectives of the City of Waukegan, EPA and Illinois EPA.

N. On November 12, 2002, the Waukegan City Council adopted Ordinance No. 01-0-123 set forth in Exhibit A authorizing legal counsel for the City to secure title to all of the OMC property located on the Waukegan lakefront for public purposes and, if necessary, to commence an action in eminent domain to secure title to the property. On December 9, 2002, the City of Waukegan and the Chapter 7 bankruptcy trustee for the OMC estate entered into an Option to Purchase Real Property (the "Option Agreement"), attached as Exhibit B, which Option Agreement was duly recorded with the Recorder of Deeds in Lake County, Illinois. The City of Waukegan, pursuant to the November 12, 2002 Waukegan City Council Ordinance and the Option Agreement, intends to acquire title to the Property by eminent domain for public

purposes, to facilitate resolution of certain practical problems at the Site and Property set forth in the previous paragraph, and to advance the common goals of the City of Waukegan, EPA and Illinois EPA, in exchange for the rights and benefits afforded by this Supplemental Consent Decree.

O. The City of Waukegan intends to use the Property for various public and private interim uses, including but not limited to a boat storage facility, a soil treatment facility, and to facilitate the redevelopment of the Site and Property for mixed-use residential, public, commercial, and/or recreational uses. The Property is legally described at Exhibit C to this Supplemental Consent Decree.

P. In order to promote the resolution of the practical problems described above regarding the Site and Property, the City of Waukegan has agreed to undertake all actions required by the terms and conditions of this Supplemental Consent Decree. The City of Waukegan has agreed to intervene in this action in order to facilitate the entry of this Supplemental Consent Decree, which defines the obligations and responsibilities of the Settling Parties.

Q. The Settling Parties agree that the City of Waukegan's entry into this Supplemental Consent Decree and the actions undertaken by the City of Waukegan in accordance with the Supplemental Consent Decree do not constitute an admission of any liability by the City of Waukegan with respect to the Site and the Property.

R. The Settling Parties agree that the public will benefit by resolving the City of Waukegan's potential liabilities that may arise from becoming the owner of, and taking other actions with respect to, the Property as set forth in this Supplemental Consent Decree. The EPA, the State of Illinois, and the public will benefit from the receipt of certain promises and privileges that might not otherwise be available. The resolution of the City of Waukegan's potential liability in exchange for the City of Waukegan providing the United States and the State of Illinois with substantial environmental benefits is in the public interest.

S. The City of Waukegan represents, and for purposes of this Supplemental Consent Decree, EPA relies on those representations, that the City of Waukegan has had no involvement with the Site and Property other than as set forth in this Supplemental Consent Decree and stipulates that it has made all appropriate inquiries prior to purchase of the Property.

T. The Settling Parties recognize, and the Court by entering this Consent Decree finds, that this Supplemental Consent Decree has been negotiated by the Settling Parties in good faith and implementation of this Supplemental Consent Decree will expedite the resolution of the practical problems relating to the Site and Property described above, and that this Supplemental 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 Parties hereto. The Settling Parties agree not to challenge the terms of this Supplemental Consent Decree or this Court's jurisdiction to enter and enforce this Supplemental Consent Decree.

III. PARTIES BOUND

2. This Supplemental Consent Decree applies to and is binding upon the United States and the State of Illinois and upon the City of Waukegan and its successors, assigns and transferees. Any change in corporate status of the City of Waukegan including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the City of Waukegan's responsibilities under this Supplemental Consent Decree without prior written approval of the Settling Parties and of this Court.

3. The City of Waukegan shall provide a copy of this Supplemental Consent Decree to each contractor hired to perform the Work (as defined below) required by this Supplemental Consent Decree and to each person representing the City of Waukegan 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 Supplemental Consent Decree. The City of Waukegan or its contractors shall provide written notice of the Supplemental Consent Decree to all subcontractors hired to perform any portion of the Work required by this Supplemental Consent Decree. The City of Waukegan shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Supplemental

Consent Decree. With regard to the activities undertaken pursuant to this Supplemental Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the City of Waukegan 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 Supplemental 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 Supplemental 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.*

"City of Waukegan" shall mean the municipal corporation of the City of Waukegan, Illinois and its successors, assigns and transferees.

"CWA" shall mean the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*

"Effective Date" shall be the effective date of this Supplemental Consent Decree as provided in Section XXIV .

"Excluded Response Action" shall mean –

(1) with respect to the PCB Containment Cells,

(a) compliance monitoring, pursuant to paragraph 3.2.5 of the O&M Plan, and corrective action programs, pursuant to paragraph 3.2.6 of the O&M Plan (other than such compliance monitoring or corrective action programs necessitated by failure of the City of Waukegan to perform its obligations under this Supplemental Consent Decree and corrective action programs involving increased pumping frequency or rate within the design capacity of the equipment);

(b) obligations regarding maintenance of the Temporary Designated Soil Stockpile on the Coke Plant Site;

(c) retrofitting the existing low flow groundwater extraction system (design

capacity of less than 5 gallons per minute) to achieve higher rates of extraction as necessitated by slurry wall failure or a compromised condition requiring below grade remediation;

(d) retrofitting the existing treatment system (filter socks and carbon adsorption) as necessitated by slurry wall failure or a compromised condition requiring below-grade remediation (except for maintenance required by the O&M Plan); and

(e) below-grade remediation of the PCB Containment Cells (exceeding a depth of one foot below the surface of the PCB Containment Cells);

(2) with respect to Plant 2, any extraction or removal of contaminated soil, sediments, or groundwater in connection with Existing Contamination and any investigative, assessment, or corrective action program related thereto.

"Existing Contamination" shall mean:

(1) any hazardous substances, pollutants or contaminants present or existing on or under the Property as of the effective date of this Supplemental Consent Decree;

(2) any hazardous substances, pollutants or contaminants that migrated from the Property prior to the effective date of this Supplemental Consent Decree; and

(3) any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the effective date of this Supplemental Consent Decree.

"Government Settling Parties" or "Plaintiffs" shall mean the United States and the State of Illinois.

"Illinois EPA" shall mean the Illinois Environmental Protection Agency.

"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 have the meaning provided in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

"Natural Resource Damages" means damages, including costs of damages assessment, recoverable under Section 107 of CERCLA for injury to, destruction of, or loss of any and all

Natural Resources at the Site.

"Operation and Maintenance" or "O&M" shall mean all activities, including but not limited to, repair activities required to maintain the PCB Impoundments at the Site as required by the O&M Plan, other than taking Excluded Response Action. The requirements of this Supplemental Consent Decree shall supercede any conflicting requirement in the O&M Plan.

"O&M Plan" shall mean the Operations and Maintenance Plan, Waukegan Harbor Remedial Action, Waukegan Harbor Superfund Site, Waukegan, Illinois, Revision No. 1.0, dated January 1997, attached as Exhibit D.

"PCB Containment Cells" shall mean those areas defined in Figures 3, 4, and 5 of the 1997 O&M Plan.

"Plant 2" shall mean the building structures and land areas of the Property excluding the PCB Containment cells.

"Property" shall mean Plant 2 and the PCB Containment Cells, as specifically described in Exhibit C of this Agreement.

"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 EPA Record of Decision relating to the Waukegan Harbor Site signed on May 15, 1984, by the Regional Administrator, EPA Region 5, or his/her delegate, and all attachments thereto.

"Settling Parties" shall mean the United States on behalf of EPA, the State of Illinois on behalf of the Illinois EPA, and the City of Waukegan.

"Site" shall mean the Outboard Marine Corp., Inc. Superfund Site, located in the City of Waukegan, Lake County, Illinois, adjacent to Waukegan Harbor and Lake Michigan, and depicted generally on the map attached as Exhibit E. The Site shall include all areas to which hazardous substances and/or pollutants or contaminants, have come to be located, but excluding the Outboard Marine Company (OMC) Operable Unit 2 (also known as the Waukegan Coke Plant) the subject of a Record of Decision dated September 30, 1999 and identified by EPA as ROD No. EPA/541/R-99/111.

"State" shall mean the State of Illinois and its departments and agencies.

"Supervising Contractor" shall mean the principal contractor retained by the City of

Waukegan to supervise and direct the implementation of the Work under this Supplemental Consent Decree.

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

"United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

"Work" shall mean all activities the City of Waukegan is required to perform under this Supplemental Consent Decree.

V. GENERAL PROVISIONS

5. Objectives of the Settling Parties. The objectives of the Settling Parties in entering into this Supplemental Consent Decree are to protect public health, welfare and the environment at the Site and the Property by the implementation of the Work and O&M activities at the Site and Property by the City of Waukegan and to resolve the potential liability of the City of Waukegan to the Government Settling Parties as provided in this Supplemental Consent Decree.

6. Commitments by the City of Waukegan.

a. The City of Waukegan shall finance and perform the Work in accordance with this Supplemental Consent Decree, the O&M Plan and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by the City of Waukegan and approved by EPA and Illinois EPA pursuant to this Supplemental Consent Decree. This Supplemental Consent Decree does not obligate the City of Waukegan to undertake Excluded Response Action with respect to Existing Contamination.

b. In the event the City of Waukegan pays amounts to the Government Settling Parties in the future, any amounts paid to EPA may be deposited in the OMC Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response action at or in connection with the OMC Site, to pay for Agency oversight costs, or as appropriate, to be transferred by EPA to the Hazardous Substance Superfund.

7. Compliance With Applicable Law. All activities undertaken by the City of

Waukegan pursuant to this Supplemental Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. The City of Waukegan 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 O&M Plan in the performance of the Work under this Supplemental Consent Decree. The Work conducted pursuant to this Supplemental Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits.

a. With the exception of activities required under Paragraph 12.b. of this Supplemental Consent Decree, 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., 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, the City of Waukegan shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. This Supplemental 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 15 days after the acquisition of the Property, the City of Waukegan shall submit to EPA and the State for review and approval a notice to be filed with the Recorder's Office, Lake County, State of Illinois, which shall provide notice to all successors-in-title that the Property is part of and/or next to the Site, that EPA selected a remedy for the Site, and that the City of Waukegan has entered into an Supplemental Consent Decree requiring implementation of the O&M. Such notice shall identify the United States District Court in which this Supplemental Consent Decree was filed, the name and civil action number of this case, and the date the Supplemental Consent Decree was entered by the Court. The City of Waukegan shall record the notice within 10 days of EPA's approval of the notice. The City of Waukegan shall provide EPA and the State with a certified copy of the recorded notice within 10 days of recording such notice.

b. Within 30 days after acquisition of the Property, the City of Waukegan shall submit to EPA and the State for review and approval a Declaration of Environmental Easement and Environmental Covenant running with the land to be filed with the Recorder's

Office, Lake County, State of Illinois, which shall provide: (i) a right of access to the Property (hereinafter referred to as "access easements") pursuant to Section VIII (Access/Institutional Controls), and (ii) a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive covenants") pursuant to Section VIII (Access/Institutional Controls), and requires any subsequent transferee to be bound by all the requirements of the O&M Plan including, but not limited to, the compliance monitoring and corrective action program requirements, pursuant to Section XVIII, herein. The City of Waukegan shall record the Declaration of Environmental Easement and Environmental Covenant within 10 days of EPA's approval of the notice. The City of Waukegan shall provide EPA and the State with a certified copy of the recorded Declaration of Environmental Easement and Environmental Covenant within 10 days of recording. Nothing in this Paragraph 9 shall relieve the City of any obligations under this Supplemental Consent Decree.

c. At least 30 days prior to the conveyance of any interest in the Property including, but not limited to, fee interests, leasehold interests, and mortgage interests, the City of Waukegan shall give the grantee written notice of: (i) this Supplemental Consent Decree; (ii) the City of Waukegan's obligations under this Supplemental Consent Decree including, but not limited to, its O&M requirements and institutional control requirements on transferees, (iii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Property (hereinafter referred to as "access easements") pursuant to Section VIII (Access/ Institutional Controls), and (iv) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive covenants") pursuant to Section VIII (Access/Institutional Controls). Any contract or other instrument providing for the conveyance of the Property shall require the grantee to be bound by all the requirements of the O&M Plan including, but not limited to, the compliance monitoring and corrective action program requirements, pursuant to Section XVIII, herein and shall require the recording of this Supplemental Consent Decree, access easements, restrictive covenants and O&M Plan such that all such requirements run with the land and are binding on the grantees and subsequent grantees. At least 30 days prior to such conveyance, the City of Waukegan shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the

Supplemental Consent Decree, access easements, and/or restrictive covenants was given to the grantee.

d. In the event of any such conveyance, the City of Waukegan's obligations under this Supplemental 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 VIII (Access/Institutional Controls) of this Supplemental Consent Decree, shall continue to be met by the City of Waukegan. In no event shall the conveyance release or otherwise affect the liability of the City of Waukegan to comply with all provisions of this Supplemental Consent Decree, absent the prior written consent of the United States and the State. If the United States and the State approve, the grantee may perform some or all of the Work under this Supplemental Consent Decree.

10. Lien on Property

The City represents that it is a bona fide prospective purchaser of the Property to which this Supplemental Consent Decree applies and acknowledges the existence on behalf of the United States of an appropriate lien under the provisions of Section 107 of CERCLA, 42 U.S.C. § 9607, on the Property. The City agrees that the Illinois EPA shall have a lien on the Property for unrecovered response costs incurred or to be incurred consistent with applicable environmental law with respect to the Property. Subsequent to the City of Waukegan's purchase of the Property, EPA may record this Supplemental Consent Decree in the Lake County Recorder of Deeds Office as a means of perfecting its lien under the appropriate lien provisions of CERCLA on the Property.

VI. PERFORMANCE OF THE WORK BY THE CITY OF WAUKEGAN

11. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by the City of Waukegan pursuant to Sections VI (Performance of the Work by the City of Waukegan), VII (Quality Assurance, Sampling and Data Analysis), and XIII (Emergency Response) of this Supplemental Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA after a reasonable opportunity for review and comment by the Illinois EPA. Within 10 days after the lodging of this Supplemental Consent

Decree, the City of Waukegan shall notify EPA and the Illinois EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, the City of Waukegan shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, the City of Waukegan proposes to change a Supervising Contractor, the City of Waukegan shall give such notice to EPA and the Illinois EPA and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the Illinois EPA, before the new Supervising Contractor performs, directs, or supervises any Work under this Supplemental Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify the City of Waukegan in writing. The City of Waukegan shall submit to EPA and the Illinois EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 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. The City of Waukegan may select any contractor from that list that is not disapproved and shall notify EPA and the Illinois EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

12. Operation and Maintenance

a. The City of Waukegan shall implement the activities required under this Supplemental Consent Decree and the O&M Plan within 30 days of EPA approval of the Supervising Contractor. The City of Waukegan shall submit to EPA and the Illinois EPA all plans, submittals, or other deliverables required under the approved O&M Plan in accordance with the approved schedule for review and approval pursuant to Section X (EPA/State Approval of Plans and Other Submissions).

b. The City shall repair and maintain the roofs on structures on the Property to prevent entry of precipitation, hail and melting snow into, and the release of surface water to the environment from, said structures, including but not limited to permanently securing and maintaining in a closed position all explosion-proof roof vents for a period of six (6) years after the effective date of this Supplemental Consent Decree. Thereafter, the City shall take reasonable measures to minimize the effects of precipitation, hail and melting snow into, and the release of surface water to the environment from, said roofs on the structures on the Property. The City shall cap or disconnect building water pipes on the property, as necessary, to eliminate to the extent practicable the release of surface water to the environment from structures on the Property. The City shall at all times keep the Plant 2 storm water collection and discharge system in working order and 60 days after its purchase of the Property shall submit to the Illinois EPA an application and thereafter take any other steps necessary to obtain a new storm water permit which reflects the new and anticipated uses for the Property.

13. The City of Waukegan shall continue to implement the O&M for so long as is required under the ROD, the O&M Plan and this Supplemental Consent Decree, until such time that EPA, after reasonable opportunity for review and comment by Illinois EPA, determines that O&M may be terminated, or until such time that the EPA, after reasonable opportunity for review and comment by Illinois EPA, approves the termination of O&M after petition from, and demonstration by, the City of Waukegan that O&M is no longer necessary.

VII. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

14. Prior to commencement of the O&M, the City of Waukegan shall submit to EPA for review and approval, after reasonable opportunity for review and comment by Illinois EPA, a Quality Assurance Project Plan ("QAPP") that is consistent with the National Contingency Plan, the O&M Plan, and applicable EPA guidance documents. The City of Waukegan shall use quality assurance, quality control, and chain of custody procedures for all O&M samples specified in the O&M Plan and QAPP consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to The City of Waukegan of such amendment.

Amended guidelines shall apply only to procedures conducted after such notification. If relevant to the proceeding, the Settling Parties agree that validated sampling data generated in accordance with the QAPP and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Supplemental Consent Decree. The City of Waukegan shall ensure that EPA and Illinois EPA personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by the City of Waukegan in implementing this Supplemental Consent Decree. In addition, the City of Waukegan shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. The City of Waukegan 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; however, upon approval by EPA, after opportunity for review and comment by the Illinois EPA, the City of Waukegan may use other EPA analytical methods which are as stringent as or more stringent than the CLP-approved methods. The City of Waukegan shall ensure that all laboratories they use for analysis of samples taken pursuant to this Supplemental Consent Decree participate in an EPA or EPA-equivalent QA/QC program. The City of Waukegan shall only use laboratories that have a documented Quality System which complies with one of the following: ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001), or equivalent documentation as determined by EPA. The City of Waukegan may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) or the Illinois Laboratory Accreditation Program as meeting the Quality System requirements, but only with prior written approval of EPA. The City of Waukegan shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Supplemental Consent Decree will be conducted in accordance with the procedures set forth in the O&M Plan and QAPP approved by EPA.

15. Except for sampling conducted pursuant to the approved O&M Plan, upon request, the City of Waukegan shall allow split or duplicate samples to be taken by EPA and the Illinois EPA or their authorized representatives. The City of Waukegan shall notify EPA and the Illinois EPA not less than 14 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the Illinois EPA shall have the right to take any additional samples that EPA or the Illinois EPA deem necessary. Upon request, EPA and the Illinois EPA shall allow the City of Waukegan to take split or duplicate samples of any samples they take as part of the Plaintiffs' oversight of the City of Waukegan's implementation of the Work.

16. The City of Waukegan shall submit to EPA and the Illinois EPA 2 copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of the City of Waukegan with respect to the Site and the Property and/or the implementation of this Supplemental Consent Decree unless EPA agrees otherwise.

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

VIII. ACCESS/INSTITUTIONAL CONTROLS

18. Commencing upon the date that it acquires title to the Property, the City of Waukegan agrees to provide to EPA and the State and their authorized officers, employees, representatives, and all other persons performing response actions under EPA or State oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by the City of Waukegan, for the purposes of performing and overseeing response actions at the Site under federal and State law. EPA and the State agree to provide reasonable notice to the City of Waukegan of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource

Conservation and Recovery Act, 42 U.S.C. § 6901,("RCRA") *et. seq.*, the Illinois Environmental Protection Act, 415 ILCS 5/1 *et. seq.*, and any other applicable statute or regulation, including any amendments thereto.

19. Commencing on the date that it acquires title to the Property, the City of Waukegan shall refrain from using the Site, or the Property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures that have been or are to be performed on any portion of the Site or the Property, including remedial measures under the ROD, and any other response actions selected by EPA and the Illinois EPA for the Site or the Property. The City of Waukegan shall: (1) abide by any institutional controls including, but not limited to, land/water use restrictions that may be applicable to the Site or the Property; and (2) provide notice to EPA and Illinois EPA thirty (30) days prior to the demolition or significant alteration of any structure on the Property, or significant alteration of the topography of the Property.

20. If EPA or the State determines that land/water use restrictions 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, the City of Waukegan shall cooperate with EPA's and the State's efforts to secure such governmental controls. Nothing herein shall preclude the City from (1) seeking the enhancement of any remedial measures selected by EPA in any record of decision pursuant to Section 121 of CERCLA at the Property, (2) enacting or adopting plans or ordinances which do not conflict with any record of decision at the Property, or (3) seeking any appropriate review of any remedial measures selected by EPA in a record of decision at the Property as provided by law.

IX. REPORTING REQUIREMENTS

21. In addition to any other requirement of this Supplemental Consent Decree, the City of Waukegan shall submit to EPA and the Illinois EPA 3 copies of written quarterly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Supplemental Consent Decree during the previous quarter; (b) include a summary of all results of sampling and tests and all other data received or generated by the City of Waukegan or

their contractors or agents in the previous quarter; (c) identify all work plans, plans and other deliverables required by this Supplemental Consent Decree completed and submitted during the previous quarter; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks; (e) include 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 the City of Waukegan have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the EPA's Community Relations Plan during the previous quarter and those to be undertaken in the next quarter. The City of Waukegan shall submit these progress reports to EPA and the Illinois EPA by the tenth day of the month following the reporting quarter following the entry of this Supplemental Consent Decree until EPA notifies the City of Waukegan. If requested by EPA or the Illinois EPA, the City of Waukegan shall also provide briefings for EPA and the Illinois EPA to discuss the progress of the Work.

22. The City of Waukegan shall notify EPA of any change in the schedule described in the quarterly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

23. Upon the occurrence of any event during performance of the Work that the City of Waukegan is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), the City of Waukegan 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. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

24. Within 20 days of the onset of such an event described in Paragraph 23, the City of Waukegan shall furnish to Plaintiffs a written report, signed by the City of Waukegan's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in

response thereto. Within 30 days of the conclusion of such an event, the City of Waukegan shall submit a report setting forth all actions taken in response thereto. Nothing herein shall obligate the City of Waukegan to undertake Excluded Response Action.

25. The City of Waukegan shall submit 3 copies of all plans, reports, and data required by the O& M Work Plan or any other approved plans to EPA in accordance with the schedules set forth in such plans. The City of Waukegan shall simultaneously submit 3 copies of all such plans, reports and data to the State. Upon request by EPA the City of Waukegan shall submit in electronic form all portions of any report or other deliverable the City of Waukegan is required to submit pursuant to the provisions of this Supplemental Consent Decree.

26. All reports and other documents submitted by the City of Waukegan to EPA (other than the quarterly progress reports referred to above) which purport to document the City of Waukegan's compliance with the terms of this Supplemental Consent Decree shall be signed by an authorized representative of the City of Waukegan.

X. EPA/STATE APPROVAL OF PLANS AND OTHER SUBMISSIONS

27. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Supplemental Consent Decree, EPA, after reasonable opportunity for review and comment by the Illinois EPA, shall: (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 City of Waukegan modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing the City of Waukegan at least one notice of deficiency and an opportunity to cure within 30 days, 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 indicate a bad faith lack of effort to submit an acceptable deliverable.

28. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 27 (a), (b), or (c), the City of Waukegan 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 Paragraph 31 with respect to the

modifications or conditions made by EPA.

29. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 27 (d), the City of Waukegan shall, within 10 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.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 27 (d), the City of Waukegan shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

30. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the City of Waukegan 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. The City of Waukegan shall implement any such plan, report, or item as modified or developed by EPA, subject only to its right to invoke the procedures set forth in Paragraph 31.

31. EPA's decision regarding approval, approval upon conditions, modification, or disapproval shall be binding on the City of Waukegan unless, within 10 days of receipt of the decision, the City of Waukegan provides the Governmental Settling Parties a notice of dispute. Any such dispute which arises under this Paragraph shall in the first instance be the subject of informal negotiations between the Settling Parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. Following the conclusion of the informal negotiations period, EPA will issue a final decision resolving the dispute. EPA's decision shall be binding unless, within 10 days of receipt of the decision, the City of Waukegan files with the Court and serves on the Governmental Parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the Settling 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 Supplemental Consent Decree. The United States may file a response to the City of Waukegan's motion. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

32. All plans, reports, and other items required to be submitted to EPA under this

Supplemental Consent Decree shall, upon approval or modification by EPA, be enforceable under this Supplemental 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 Supplemental Consent Decree, the approved or modified portion shall be enforceable under this Supplemental Consent Decree.

XI. PROJECT COORDINATOR

33. Within 20 days of lodging this Supplemental Consent Decree, the City of Waukegan, the State 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 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The City of Waukegan's 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 City of Waukegan's Project Coordinator shall not be an attorney for the City of Waukegan 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.

34. Plaintiffs may designate other representatives, including, but not limited to, EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Supplemental 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 Supplemental 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.

XII. DUE CARE/COOPERATION

35. The City of Waukegan shall exercise due care at the Property with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations, provided that the Parties agree that under the particular facts and circumstances of this Site, no action that is an Excluded Response Action constitutes a due care requirement or obligation of the City of Waukegan. The City of Waukegan recognizes that the implementation of response actions at the Site may interfere with the City of Waukegan's use of the Property, and may require temporary closure of its operations or a part thereof. The City of Waukegan agrees to cooperate fully with EPA in the implementation of response actions at the Site and further agrees not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the City of Waukegan's operations by such entry and response. In the event the City of Waukegan becomes aware of any condition, action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the City of Waukegan shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any other law, immediately notify EPA of such release or threatened release, provided, however, that nothing in this sentence shall obligate the City to undertake Excluded Response Action.

XIII. EMERGENCY RESPONSE

36. In the event of any action or occurrence relating to the City of Waukegan's performance of the Work in a manner inconsistent with this Supplemental Consent Decree, which causes or threatens a release of hazardous substances from the Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the City of Waukegan shall, subject to Paragraph 37, 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 City of Waukegan shall notify the EPA Emergency Response Unit, Region 5. The City of Waukegan

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, the Contingency Plans, and any other applicable plans or documents developed pursuant to the O&M Plan. In the event that the City of Waukegan fails to take appropriate response action as required by this Section, and EPA or, as appropriate, the State takes such action instead, the City of Waukegan shall reimburse EPA and the State all costs of the response action not inconsistent with the NCP.

37. Nothing in the preceding Paragraph or in this Supplemental Consent Decree shall be deemed to limit any authority of the United States, or the State, a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of hazardous substances on, at, or from the Property, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of hazardous substances on, at, or from the Site, subject to Section XV (United States' and State's Covenants Not to Sue).

XIV. CERTIFICATION

38. By entering into this Supplemental Consent Decree, the City of Waukegan certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA and the State all information known to the City of Waukegan and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Supplemental Consent Decree. The City of Waukegan also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States and the State determine that information provided by the City of Waukegan is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States and the State reserve all rights they may have.

XV. UNITED STATES' AND STATE'S COVENANTS NOT TO SUE

39. Subject to the Reservation of Rights in Section XVI of this Supplemental Consent Decree, the United States and the State covenant not to sue or take any other civil or administrative action against the City of Waukegan for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), Section 309(a), (b) and (d) of the CWA, 33 U.S.C. §§1319(a), (b) and (d), Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. §1321, Sections 3004, 3008(a) and 7003 of RCRA, 42 U.S.C. §§ 6924, 6928(a) and 6973, Section 3019(g) of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6939a(g), Section 205(h) of the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §6991b(h), Section 9006 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6991e, Section 13 of the Rivers and Harbors Act of 1899, 33 U.S.C. §407, Sections 6 and 16 of the Toxic Substances Control Act, 15 U.S.C. §§ 2606 and 2616, the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.,* the Illinois Public Nuisance Act, 415 ILCS 5/47-5 et. seq., or common law of nuisance with respect to Existing Contamination.

40. These Covenants Not to Sue shall be effective only when the City of Waukegan takes title to the Property. These Covenants Not to Sue are conditioned upon the satisfactory performance by the City of Waukegan of its obligations under this Supplemental Consent Decree.

41. These Covenants Not to Sue extend only to the City of Waukegan, its successors, assigns, transferees, lessees and sublessees pursuant to Section XVIII (Parties Bound/Transfer of Covenant).

XVI. RESERVATION OF RIGHTS

42. The covenant not to sue set forth in Section XV above does not pertain to any matters other than those expressly specified in Section XV (United States' and State's Covenants Not to Sue). The United States and the State reserve and this Supplemental Consent Decree is without prejudice to all rights against the City of Waukegan and its successors, assigns, transferees, lessees and sublessees with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure to meet a requirement of this Supplemental Consent

Decree, including but not limited to Section VI (Performance of Work by the City of Waukegan), Section VIII (Access/Institutional Controls), Section XII (Due Care/Cooperation);

(b) any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by the City of Waukegan, its successors, assignees, transferees, lessees or sublessees;

(c) any liability resulting from exacerbation by the City of Waukegan, its successors, assignees, transferees, lessees or sublessees, of Existing Contamination, other than as provided in the Work or otherwise ordered by EPA;

(d) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Supplemental Consent Decree, not within the definition of Existing Contamination;

(e) criminal liability;

(f) any matter not expressly included in the United States' and State's Covenants Not to Sue set forth in Section XV of this Agreement;

(g) liability for violations of local, State or federal permits, law or regulations;

(h) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resources assessments; and

(i) claims based on any appropriate lien provisions of Section 107 of CERCLA, 42 U.S.C. § 9607.

43. With respect to any claim or cause of action asserted by the United States or the State, the City of Waukegan shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

44. Nothing in this Supplemental Consent Decree is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States or the State may have against any person, firm, corporation or other entity not a party to this Supplemental Consent Decree.

45. Nothing in this Supplemental Consent Decree is intended to limit the right of the United States, the State or the City of Waukegan to undertake future response actions at the Site or, except as provided in Paragraph 76, the rights of the United States, the State and the City of Waukegan against other parties with respect to the Site. Nothing in this Supplemental Consent

Decree shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA, the State or the City of Waukegan in exercising their authority under federal or State law. The City of Waukegan acknowledges that it is purchasing Property where response actions may be required.

XVII. THE CITY OF WAUKEGAN'S COVENANT NOT TO SUE

46. In consideration of the United States' Covenant Not To Sue in Section XV of this Supplemental Consent Decree, the City of Waukegan hereby covenants not to sue and not to assert any claims or causes of action against the United States or the State and their authorized officers, employees, or representatives with respect to the Site or this Supplemental Consent Decree, including but not limited to, any direct or indirect claims 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), 111, 112, 113, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Property constituting the Work, including claims based on EPA's oversight of such activities or approval of plans for such activities.

47. The City of Waukegan reserves, and this Supplemental Consent Decree is without prejudice to, actions against the United States and the State based on negligent actions taken directly by the United States and the State, not including oversight or approval of the City of Waukegan's plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein 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).

XVIII. PARTIES BOUND/TRANSFER OF COVENANT

48. This Supplemental Consent Decree shall apply to and be binding upon the United States and the State, and shall apply to and be binding upon the City of Waukegan. The United States' and State's Covenant Not to Sue in Section XV and Contribution Protection in Section XX shall apply to the City of Waukegan's elected and appointed officials, or employees

to the extent that the alleged liability of the official or employee; is based on its status and in its capacity as an official or employee of the City of Waukegan, and not to the extent that the alleged liability arose independently of the alleged liability of the City of Waukegan. Each signatory of a Party to this Supplemental Consent Decree represents that he or she is fully authorized to enter into the terms and conditions of this Supplemental Consent Decree and to legally bind such Party.

49. The City of Waukegan shall give EPA and the State at least 45 days notice of its intent to assign or transfer the Property or any interest in the Property. Notwithstanding any other provisions of this Supplemental Consent Decree, all of the rights, benefits and obligations conferred upon the City of Waukegan under this Supplemental Consent Decree may be assigned or transferred to any person solely with the prior written consent of the United States and the State in their unreviewable discretion. As provided in Paragraph 51, all such rights and benefits shall be subject to compliance by the assignees or transferees with the requirements of this Supplemental Consent Decree.

50. The City of Waukegan agrees to pay the reasonable costs incurred by EPA and the State to review any subsequent requests for consent to assign or transfer the rights, benefits and obligations conferred by this Supplemental Consent Decree.

51. The City of Waukegan shall execute no assignment or transfer of less than all of the Property, except that nothing herein shall bar the City of Waukegan from leasing the Property, or portions thereof, for limited periods of time. In the event of any assignment or transfer of the Property or any assignment or transfer of any interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Supplemental Consent Decree except as the United States, the State and the assignor or transferor agree otherwise and modify this Supplemental Consent Decree, in writing, accordingly. Prior to, or simultaneously with, any assignment or transfer of the Property or an assignment or transfer of any interest in the Property, the assignee or transferee must consent in writing to be bound by all the requirements of the O&M Plan including, but not limited to, the compliance monitoring and corrective action program requirements. Subsequent to such assignment or transfer, the City shall monitor on a quarterly basis the assignee or transferee's compliance with the O&M Plan requirements for the cells, and shall immediately arrange to implement the O&M plan requirements as required of it by this Supplemental Consent Decree if the assignee or transferee, for

whatever reason, cannot do so itself. Moreover, prior to or simultaneous with any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Supplemental Consent Decree, including but not limited to the access/institutional control requirements of Section VIII and the certification requirement in Section XIV and must agree to covenants not to sue the United States and the State similar to those provided in Section XVII of this Supplemental Consent Decree, in order for the Covenants Not to Sue in Section XV to be available to that party. The Covenants Not To Sue in Section XV shall not be effective with respect to any assignees or transferees who fail to provide such written consents to EPA and the State.

XIX. DISCLAIMER

52. This Supplemental Consent Decree in no way constitutes a finding by EPA or the State as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA or the State that the Property or the Site is fit for any particular purpose.

XX. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

53. Nothing in this Supplemental Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Supplemental Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Supplemental Consent Decree may have under applicable law. Each of the Settling 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 and the Property against any person not a Party hereto.

54. The Settling Parties agree, and by entering this Supplemental Consent Decree this Court finds, that the City of Waukegan is entitled, as of the Effective Date, 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 Supplemental Consent Decree. The matters addressed in this Supplemental Consent Decree are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person for the Property with respect to

the Existing Contamination, but excluding liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resources assessments.

55. The City of Waukegan agrees that with respect to any suit or claim for contribution or cost recovery brought by them for matters related to this Supplemental Consent Decree they will notify the United States and the State in writing no later than 60 days prior to the initiation of such suit or claim.

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

57. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or Natural Resource Damages, or other appropriate relief relating to the Site, the City of Waukegan shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants Not to Sue set forth in Section XV (United States' and State's Covenants Not to Sue).

XXI. ACCESS TO INFORMATION

58. The City of Waukegan shall provide to EPA and the State, 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 Supplemental 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. The City of Waukegan shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

59. Business Confidential and Privileged Documents.

a. The City of Waukegan may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Supplemental 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 and the State, or if EPA has notified the City of Waukegan that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to the City of Waukegan.

b. The City of Waukegan 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 City of Waukegan assert such a privilege in lieu of providing documents, 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 contents of the document, record, or information: and (6) the privilege asserted by the City of Waukegan. However, no documents, reports or other information created or generated pursuant to the requirements of this Supplemental Consent Decree shall be withheld on the grounds that they are privileged.

60. No claim of privilege or 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.

XXII. RETENTION OF RECORDS

61. The City of Waukegan agrees to retain and make available to EPA and the State all business and operating records, contracts, Site studies and investigations, and documents relating to operations at the Property, for at least ten years after the completion of the Work to the

satisfaction of EPA and the State, unless otherwise agreed to in writing by the Settling Parties. At the end of the ten year period, the City of Waukegan shall notify EPA and the State of the location of such documents and shall provide EPA and the State with an opportunity to copy any documents at the expense of EPA or the State.

62. The City of Waukegan must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) 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, provided, however, that the City of Waukegan (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any City of Waukegan retention policy to the contrary.

63. At the conclusion of this document retention period, the City of Waukegan shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State, the City of Waukegan shall deliver any such records or documents to EPA or the State. The City of Waukegan 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 City of Waukegan asserts 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 the City of Waukegan. However, no documents, reports or other information created or generated pursuant to the requirements of this Supplemental Consent Decree shall be withheld on the grounds that they are privileged.

64. The City of Waukegan 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 (other than identical copies) relating to the Site or the Property since December 2000.

XXIII. NOTICES AND SUBMISSIONS

65. Whenever, under the terms of this Supplemental 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 this Supplemental Consent Decree with respect to the United States, EPA, the State, and the City of Waukegan, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-07051/3

and

Richard C. Karl
Acting Director, Superfund Division [SE-5J]
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

As to EPA:

Kevin Adler
EPA Project Coordinator [SE-5J]
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

As to the State of Illinois

Chief, Environmental Bureau North
Illinois Attorney General's Office
100 W. Randolph Street, 12th flr.
Chicago, Illinois 60601

As to Illinois EPA

Illinois Environmental Protection Agency
Bureau of Land - 24

Federal Site Remediation Section
P.O. Box 19276
Springfield, Illinois 62794-9276

As to the City of Waukegan:

Mayor's Office
City of Waukegan
106 N. Utica Street
Waukegan, IL 60085

and

Jeffery D. Jeep, Esq.
The Jeff Diver Group, LLC
1749 South Naperville Road
Suite 102
Wheaton, IL 60187

XXIV. EFFECTIVE DATE

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

XXV. RETENTION OF JURISDICTION

67. This Court retains jurisdiction over both the subject matter of this Supplemental Consent Decree, the City of Waukegan, and its successors, assigns, transferees, lessees and sublessees for the duration of the performance of the terms and provisions of this Supplemental Consent Decree for the purpose of enabling any of the Settling 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 Supplemental Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Paragraph 31 hereof.

XXVI. APPENDICES

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

"Exhibit A" is the City of Waukegan City Council Authorization, Ordinance No. 01-0-123.

"Exhibit B" is the December 9, 2002 Option to Purchase Real Property.

"Exhibit C" is the legal description of the Property.

"Exhibit D" is the January 1997 Operations and Maintenance Plan, Revision No. 1.0.

"Exhibit E" is the description and/or map of the Site.

XXVII. COMMUNITY RELATIONS

69. The City of Waukegan shall cooperate with EPA and the Illinois EPA in their development of a community relations plan providing information regarding the Property to the public. As requested by EPA or the Illinois EPA, the City of Waukegan 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 or the Illinois EPA to explain activities of the EPA, Illinois EPA or the City of Waukegan at or relating to the Property.

XXVIII. MODIFICATION

70. Schedules specified in the O&M Plan may be modified by agreement of EPA, the State and the City of Waukegan. All such modifications shall be made in writing, and filed with the Court.

71. Any material modification to this Supplemental Consent Decree shall be made by written agreement of the Parties and approval of the Court. Non-material modifications may be made by written agreement of the Parties without further Court approval, but shall be filed with the Court. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Supplemental Consent Decree.

72. Performance of the O&M by the Bankruptcy Trustee. In the event the OMC Bankruptcy Trustee is required to perform O&M in compliance with OMC's obligations under the Consent Decree pursuant to an order or judgment of the District Court in the United States' and State's Adversary Proceeding, *United States of America and People of the State of Illinois v. Alex D. Moglia,* Civ. No. 02-CV-6131 (N.D. Ill), and the Bankruptcy Trustee states that he shall comply with the Court's order and commences performance of the O&M, the City of Waukegan may cease performance of the O&M under this Supplemental Consent Decree, while the Bankruptcy Trustee is performing the O&M. The City of Waukegan shall resume performance of the O&M within 30 days of receipt of notice from EPA of the Bankruptcy Trustee's default in his performance of the

O&M.

XXIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

73. This Supplemental 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 this Supplemental Consent Decree disclose facts or considerations which indicate that this Supplemental Consent Decree is inappropriate, improper, or inadequate. The City of Waukegan consents to the entry of this Supplemental Consent Decree without further notice.

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

XXX. SIGNATORIES/SERVICE

75. Each undersigned representative of the City of Waukegan and the State to this Supplemental Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certify that he or she is fully authorized to enter into the terms and conditions of this Supplemental Consent Decree and to execute and legally bind such Party to this document.

76. The City of Waukegan hereby agrees not to oppose entry of this Supplemental Consent Decree by this Court or to challenge any provision of this Supplemental Consent Decree unless the United States has notified the City of Waukegan in writing that it no longer supports entry of this Supplemental Consent Decree. The City of Waukegan agrees not to oppose any settlement between the United States, the State and the OMC Bankruptcy Trustee resolving the Adversary Proceeding.

77. The City of Waukegan 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 Supplemental

Consent Decree. The City of Waukegan hereby agrees 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.

XXXI. FINAL JUDGMENT

78. This Supplemental Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Settling Parties with respect to the settlement embodied in this Supplemental Consent Decree. The Settling Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Supplemental Consent Decree.

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

SO ORDERED THIS __ DAY OF _____, 2005.

_____

United States District Judge

THE UNDERSIGNED PARTY enters into this Supplemental Consent Decree in the matter of United States *et al.*, v. Outboard Marine Corp., relating to the Outboard Marine Corp. Superfund Site.

FOR THE UNITED STATES OF AMERICA

2.9.05
Date

Tom Sansonetti
THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

2/10/05
Date

Francis J. Biros
ALAN S. TENENBAUM
FRANCIS J. BIROS
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 554-5409

PATRICK FITZGERALD
United States Attorney
Northern District of Illinois
U.S. Department of Justice
219 South Dearborn Street
Chicago, Illinois 60604-1702
(312) 353-1994

THE UNDERSIGNED PARTY enters into this Supplemental Consent Decree in the matter of United States *et al.*, v. Outboard Marine Corp., relating to the Outboard Marine Corp. Superfund Site.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Date

for BHARAT MATHUR
Acting Regional Administrator, Region 5, R-19J
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3507
(312) 886-3000

1-04-05
Date

THOMAS J. MARTIN
Associate Regional Counsel
U.S. Environmental Protection Agency
Region, 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3507
(312) 886-4273

THE UNDERSIGNED PARTY enters into this Supplemental Consent Decree in the matter of United States *et al.*, v. Outboard Marine Corp., relating to the Outboard Marine Corp. Superfund Site.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

2/22/05
Date

Susan E Bromm
SUSAN E. BROMM
Director, Office of Site Remediation Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Av. N.W.
Washington, D.C. 20460

THE UNDERSIGNED PARTY enters into this Supplemental Consent Decree in the matter of United States *et al.*, v. Outboard Marine Corp., relating to the Outboard Marine Corp. Superfund Site.

FOR THE STATE OF ILLINOIS
LISA MADIGAN
Attorney General
State of Illinois

MATTHEW J. DUNN
Chief, Environmental Enforcement/
Asbestos Litigation Division

Date: 11/17/04 By: _____
ROSEMARIE CAZEAU
Chief Assistant Attorney General
Environmental Bureau
188 West Randolph St
20th Floor
Chicago, IL 60601
(312) 814-3094

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Date: 10-16-04 By: _____
JOSEPH E. SVOBODA
Chief Counsel
Division of Legal Counsel
1021 Grand Avenue East
Springfield, Illinois 62794-9276
(217) 782-5544

THE UNDERSIGNED PARTY enters into this Supplemental Consent Decree in the matter of United States *et al.*, v. Outboard Marine Corp., relating to the Outboard Marine Corp. Superfund Site.

FOR THE CITY OF WAUKEGAN, ILLINOIS

DEC. 29, 2004
Date

Signature Richard H. Hyde
Name RICHARD H. HYDE
Title MAYOR
Address 100 N. MARTIN LUTHER KING JR. AVE
WAUKEGAN, ILLINOIS
60085

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

Signature
Name BRIAN S. GRACH
Title CORPORATION COUNSEL
Address 111 N. COUNTY ST.
WAUKEGAN, IL 60085

Ph. Number: 847-662-8611