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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Times Beach
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10.6
7-19-90

UNITED STATES OF AMERICA, Plaintiff, v. RUSSELL MARTIN BLISS, et al., Defendants.	Civil Action Nos. 84-200C(1), 89-351C(1)- 89-371C(1) and 90-656C(1)
STATE OF MISSOURI, Plaintiff, v. INDEPENDENT PETROCHEMICAL CORPORATION, et al., Defendants.	Civil Action No. 83-2670C(2)
STATE OF MISSOURI, Plaintiff, v. RUSSELL MARTIN BLISS, et al., Defendants.	Civil Action No. 84-1447C(4)
STATE OF MISSOURI, Plaintiff, v. SYNTEX (U.S.A.) INC., et al., Defendants.	Civil Action No.. 85-2856C(6)

S00136611
SUPERFUND RECORDS

CONSENT DECREE AND FINAL ORDER
BETWEEN UNITED STATES OF AMERICA;
STATE OF MISSOURI; SYNTEX CORPORATION;
SYNTEX (U.S.A.) INC.; SYNTEX LABORATORIES, INC.;
AND SYNTEX AGRIBUSINESS, INC.

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I. BACKGROUND

1. The United States of America, by and through the Attorney General, and on behalf of the Administrator of the United States Environmental Protection Agency (EPA), commenced Civil Action No. 84-200C(1) on January 20, 1984 pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., (CERCLA), and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., (RCRA), to seek remedial relief and recovery of response costs in connection with the release of the hazardous substances and hazardous wastes 2,3,7,8-tetrachlorodibenzo-p-dioxin (dioxin) and 2,4,5 trichlorophenol (TCP) at six sites in Missouri. Subsequently, on August 10, 1988, the United States moved to amend the complaint to seek the same relief with respect to an additional 21 sites in Missouri. On March 1, 1989, this Court granted the motion for leave to amend the complaint as to the original six sites; treated the remainder of the amended complaint as 21 separate actions and assigned Civil Action Nos. 89-351C(1) through 89-571C(1) to the 21 additional sites; and consolidated the original and newly-filed actions for discovery and trial as United States v. Bliss, et al., Civil Action Nos. 84-200C(1) and 89-351C(1)-89-371C(1). On April 6, 1990, the United States commenced Civil No. 90-656-C(1), a new complaint seeking the same relief with respect to the Hellwig Fruit Stand Site, which was consolidated with the other civil actions referenced in this Paragraph. The sites in the consolidated cases are indicated in List 1 of Attachment A. The Settling Defendants deny liability in these cases.

2. The State of Missouri, by and through the State Attorney General, and on behalf of the Missouri Department of Natural Resources, commenced Civil Action No. 83-2670C(2) on November 23, 1983; Civil Action No. 84-1447C(4) on June 20, 1984; and Civil Action No. 85-2856C(6) on November 17, 1985, pursuant to CERCLA and Missouri authorities seeking remedial relief, recovery of response costs and natural resource damages arising out of the release of dioxin at three of the sites listed in Attachment A, List 1, the Minker/Stout/Romaine Creek, Bliss Ellisville, and Times Beach Sites, respectively. The Settling Defendants deny liability in these cases as well. In order to resolve the issues pending between the State and the Settling Defendants (as hereinafter defined) and facilitate entry of this Consent Decree (Decree), the State has moved for leave to enter into the Decree lodged with this Court by the United States. Accordingly, on March 12, 1990, the above-referenced civil actions brought by the State were consolidated with United States of America v. Russell Martin Bliss, et al. The sites specified on Attachment A, List 1, at the time of lodging of this Decree, are alleged by the plaintiffs to have been contaminated as a result of actions attributable to Russell Martin Bliss or persons or business entities associated with him.

3. EPA, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, has placed four of the sites indicated in Attachment A, List 1, the Times Beach, Minker/Stout/Romaine Creek, Shenandoah Stables and the Bliss Ellisville Sites, on the National Priorities List.

40 C.F.R.Part 300, Appendix B, 52 Fed. Reg. 27634 (July 22, 1987).

4. As part of their investigation of the Sites, EPA and the State have performed public health and environmental assessments. These assessments have included descriptions of site characteristics, mobility, fate, and transport of hazardous substances identified at the sites; current research and other data on the health effects of the hazardous substances at the sites; exposure assessments; and risk characterization.

5. EPA, pursuant to 40 C.F.R. § 300.68, performed a Remedial Investigation/Feasibility Study (RI/FS) for the Times Beach Site which was released for public comment on December 29, 1986. A public meeting was held on February 12, 1987 to discuss the alternatives presented in the RI/FS. A Proposed Plan was released for public comment on February 19, 1988 which recommended centralized thermal treatment of contaminated soils from Missouri dioxin sites at Times Beach. A public meeting was held regarding the Proposed Plan on March 10, 1988. Parties to the above-referenced actions, including the State and the Settling Defendants, and the public commented on these documents.

6. In accordance with Section 121 of CERCLA, 42 U.S.C. § 9621, the Assistant Administrator for Solid Waste and Emergency Response (OSWER) issued a Record of Decision for Final Management of Dioxin-Contaminated Soil and Structures and Debris at Times Beach, Missouri and the Minker/Stout/Romaine Creek Site (the ROD) on September 29, 1988. The ROD sets forth EPA's plan for the

remediation of the dioxin contamination at the Times Beach Site and other dioxin sites by temporary placement of a thermal treatment unit at Times Beach to incinerate materials from the dioxin sites specified in Attachment A, List 1. At the conclusion of the incineration phase, the thermal treatment unit will be decontaminated and removed and the Times Beach Site will be restored consistent with the ROD. A proposed Explanation of Significant Differences to the ROD, reflecting these activities and providing, inter alia, for a greater degree of clean-up at the Times Beach Site, is pending public comment and final approval. The remediation scheme contemplated by this Decree for those sites and the other Missouri dioxin sites indicated in Attachment A, Lists 1 and 2, is consistent with the ROD.

7. Pursuant to Section 121(d)(1), the United States, the State, and the Settling Defendants (the Parties) agree that the remedial action plan adopted by EPA and embodied herein will attain a degree of cleanup of hazardous wastes, hazardous substances, pollutants and contaminants released or threatened to be released into the environment and control of further actual and threatened releases which at a minimum assures protection of public health, welfare and the environment at the sites. The Parties also agree and acknowledge that the Work Plans are, and that all Work to be performed pursuant thereto will be, consistent with and in accordance with all applicable or relevant and appropriate requirements of State and federal law.

8. The Parties recognize that this Decree reflects the compromise and settlement of disputed claims and is intended to end the uncertainties associated with the suits underlying this Decree. The Parties further recognize, and this Court, by entering this Decree, finds, that implementation of this Decree, without any determination of the merits of the Plaintiffs' claims with respect to the Settling Defendants and without any determination of liability with respect to the Settling Defendants, will expedite remediation of the Facilities and avoid prolonged and complicated litigation between the Parties, and is therefore in the public interest.

Now, therefore, it is hereby ORDERED, ADJUDGED, and DECREED that:

II. JURISDICTION

9. This Court has jurisdiction over the subject matter of these actions pursuant to 28 U.S.C. §§ 1311, 1345; 42 U.S.C. § 6973; 42 U.S.C. §§ 9606, 9607, and 9613(b); and pendent jurisdiction over the claims asserted by the State arising under the laws of Missouri. For purposes of this Decree and the underlying actions only, the Parties waive all objections to jurisdiction of this Court under 42 U.S.C. § 9613(e) and to venue in this District under 42 U.S.C. § 9613(b). All other objections as to jurisdiction and venue asserted by Settling Defendants are preserved. Without litigating the issue and for purposes of settling these actions only, the Settling Defendants do not

contest that the actions state claims against them for which relief may be granted.

III. PARTIES BOUND

10. This Decree applies to and is binding upon, and can be enforced as a contract by and against, the undersigned Parties and their successors and assigns, including any person or entity that acquires substantially all of the assets of any Party. Each Party shall provide a copy of this Decree to any contractor and subcontractor hired to perform the Work required by this Decree and shall assure that _such contractors and subcontractors comply with the terms hereof.

IV. DEFINITIONS

11. Unless noted to the contrary, the terms of this Decree shall have the meaning assigned to those terms by CERCLA and RCRA. Whenever the terms listed below are used in this Decree and the attachments hereto, the following definitions shall apply:

A. "Agency for Toxic Substances and Disease Registry" or "ATSDR" shall mean that agency established in Section 104(i) of CERCLA, 42 U.S.C. § 9604(i). Whenever a document or agreement provides for performance of an activity by the "Centers for Disease Control" or "CDC," that activity shall be performed by ATSDR to the extent it has succeeded to CDC's responsibilities.

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

C. "Consent Decree" or "Decree" shall mean this Consent Decree and all Attachments hereto.

D. "Covered Matters" shall mean any and all civil claims against and civil liability, if any, of the Settling Defendants: (1) asserted in the above-captioned actions by the United States and the State under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973; and (2) with respect to the claims of the State only, the State authorities referred to in its pleadings and any other claim the State could have asserted; and (3) with respect to the United States, any other claims under Federal environmental law or (insofar as claims referred to under (2) above could be raised by the United States) Missouri environmental law or other cost recovery provisions, arising out of the actual or threatened release of Materials at the Facilities (as hereinafter defined) indicated in Attachment A, including those for:

(a) Response Costs (as hereinafter defined) arising out of the actual or threatened release at the Facilities indicated in Attachment A of dioxin or TCP or other hazardous wastes, hazardous substances, pollutants or contaminants generated at Verona, Missouri;

(b) Injunctive and remedial relief arising out of the actual or threatened release at the Facilities of dioxin or TCP or other hazardous wastes, hazardous substances, pollutants or contaminants generated

at Verona, Missouri and for the Work (as hereinafter defined); and

(c) Claims for natural resource damages, subject to the limitation contained in (iii) below.

Notwithstanding any other provision of this Decree, "Covered Matters" will not include claims:

(i) by the Plaintiffs for any potential criminal liability;

(ii) by the Plaintiffs for liability arising from the disposal or treatment of any dioxin contaminated Materials (except delisted ash as authorized in the Work Plans) by the Settling Defendants at locations other than those indicated on Attachment A;

(iii) by the United States for natural resource damages, at the Facilities indicated in Attachment A, which, at the time of the entry of this Decree, the Department of Interior (Interior) has not expressly agreed to resolve either through settlement or a Covenant Not To Sue.

E. "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 legal holiday. In computing any period of time under this Decree, where the last day would fall on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next working day.

F. "EPA" shall mean the United States Environmental Protection Agency.

G. "Facility" or "Facilities" shall mean the same as "Site" or "Sites," as defined herein.

H. "Future Liability" refers to liability arising after completion and certification as provided herein.

I. "Materials" shall mean any substances or materials found at or removed from the Facilities, including but not limited to hazardous substances, hazardous wastes, pollutants, contaminants, soil, structures or debris, and equipment or containers.

J. "Missouri Department of Natural Resources" or "MDNR" shall mean the State agency responsible for environmental matters within the State government.

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

L. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral.

M. "Parties" shall mean the United States, the State of Missouri, and the Settling Defendants.

N. "Plaintiffs" shall mean the United States and the State of Missouri and their agencies and departments.

O. "Record of Decision" or "ROD" shall mean the Record of Decision for Final Management of Dioxin-Contaminated Soil and

Structures and Debris at Times Beach, Missouri, and the Minker/Stout/Romaine Creek Site, and all attachments thereto (the ROD), issued in accordance with Section 121 of CERCLA, 42 U.S.C. § 9621, by the Assistant Administrator for Solid Waste and Emergency Response (OSWER) on September 29, 1988, and any Explanation of Significant Differences or amendments or revisions issued thereto. The ROD is incorporated in this Decree as part of Attachment B.

P. "Resource Conservation and Recovery Act" or "RCRA" shall mean the "Solid Waste Disposal Act" or "SWDA," as amended, 42 U.S.C. § 6901 et seq.

Q. "Response Costs" shall mean any costs incurred by Plaintiffs or at their behest pursuant to 42 U.S.C. § 9601 et seq.

R. "Section" shall mean a portion of this Decree identified by a roman numeral and including one or more Paragraphs.

S. "Settling Defendants" shall mean Syntex Corporation, Syntex (U.S.A.) Inc., Syntex Laboratories, Inc., and Syntex Agribusiness, Inc.

T. "Site" or "Sites" shall mean any "facility," as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), indicated in Attachment A.

U. "State" shall mean the State of Missouri.

V. "Syntex" shall mean Syntex Corporation, and its subsidiaries, including Syntex (U.S.A.) Inc., Syntex

Laboratories, Inc., and Syntex Agribusiness, Inc., and their present or former employees, officers and directors in their capacity as such and the agents, successors and assigns of any of them. For the purpose of this definition only, "subsidiaries" shall mean all corporations or other entities in which Syntex Corporation holds, directly or indirectly, a twenty percent (20 %) or greater ownership interest or has a twenty percent (20 %) or greater interest in the profits or losses.

W. "United States" shall mean the United States of America, and its agencies and departments, including the United States Environmental Protection Agency.

X. "Work" shall mean activities required by the Decree, including the design and implementation, in accordance with Sections V and VI, hereof, of the tasks described in the Work Plans, and any schedules or plans contained therein. For the purpose of determining whether Settling Defendants have completed all Work necessary in order to obtain a Covenant Not to Sue, the term "Work" shall not include monitoring or other operation and maintenance activities to be performed by any of the Parties after the submission by the Settling Defendants of Notices of Completion.

Y. "Work Plans" shall mean the detailed plans of work, as set forth in Attachments B through D, for implementation of the remedial design, remedial action, use restrictions, and any required operation and maintenance of the remedial action at the Sites. The Parties agree that the Work Plans, which are

incorporated and made an enforceable part of this Decree, reflect the requirements of the ROD, the National Contingency Plan (NCP), and relevant guidance documents.

V. GENERAL PROVISIONS

12. Objective of the Parties. The objective of the Parties in entering into this Decree is to protect public health, welfare and the environment by the investigation, development, design and implementation of remedial and monitoring programs by the Parties, as set forth in the Work Plans.

13. Effect of Settlement. The execution of this Decree is not an admission by Syntex of liability, fault, or wrongdoing for the acts or omissions alleged in the suits underlying the Decree. This Decree shall not be used as evidence in any legal proceeding except as expressly stated herein. All motions and discovery requests served by the United States, the State, and the Settling Defendants seeking relief against or discovery from other Parties which have not been resolved or withdrawn by the date of entry of this Decree are withdrawn.

14. Commitment of Plaintiffs and Settling Defendants.

A. The Settling Defendants agree jointly and severally to finance and perform, or provide for the performance of, the Work set out in the Work Plans in Attachment B to this Decree. Such Work includes, but is not limited to, Times Beach soil sampling and analyses; implementation of flood control measures at that Site; on-site disposal of Times Beach structures and debris; mobilization of a thermal treatment unit and ancillary equipment

at the Times Beach Site; site preparation at the Times Beach Site; excavation of the dioxin contaminated materials at the Times Beach Site and other remediation at the Site; thermal treatment of dioxin contaminated materials from the Times Beach Site and other Sites indicated in Attachment A, List 1; decontamination and removal of the thermal treatment unit from the Times Beach Site; restoration of the Times Beach Site; and verification monitoring and testing at the Times Beach Site in accordance with the requirements of the Work Plans.

B. The Settling Defendants also agree to pay to the United States $10 million ($10,000,000) in settlement of Covered Matters in annual installments of $2 million ($2,000,000) commencing on the earlier of a) April 1, 1991 or b) within thirty (30) days of the issuance of all final permits necessary for the operation of the incinerator, including a final RCRA incineration permit containing operating requirements based upon a trial burn under 40 C.F.R. § 270.62(b)(10).

C. The United States agrees to perform or provide for performance of the Work set out in Attachment C. Said Work will include, but not be limited to, the excavation of dioxin contaminated Materials from certain Facilities other than Times Beach, and the remediation of certain Sites, as specified in Attachment C, and the transportation of said Materials to the Times Beach Site for thermal treatment by Settling Defendants.

D. The State of Missouri, pursuant to CERCLA, will pay ten percent (10%) of all remediation costs of the United States in

connection with the Facilities indicated in Attachment A, List 1. Those payments by Settling Defendants which will be allocated to the reimbursement of the federal government's response costs will be allocated in the following manner: 1) the total remediation costs of the United States and the State at the conclusion of all activities in connection with the Sites indicated in Attachment A, List 1, and the total of all removal costs of the United States and the State at the conclusion of all activities in connection with the Sites indicated in Attachment A, list 1, will comprise 100 percent (100%) of all governmental response costs, including investigative and enforcement costs, in connection with those Sites; 2) that percentage of the payments by Settling Defendants which is equivalent to the percentage of remedial costs incurred by the United States and the State, as compared to the total of remedial and removal costs incurred by the United States and the State, will be applied to reduce the total remedial costs of the United States for purposes of determining the ten percent (10%) contribution by the State.

E. The State of Missouri also agrees (1) to establish and enforce the land use restrictions set out in Attachment D; and (2) to ensure such operation and maintenance of the Facilities as set out in Attachment D.

F. All Work required by this Decree shall be completed as specified in the Work Plans.

G. In the event of the insolvency or other inability of any one or more Settling Defendants to implement the requirements

of this Decree, the remaining Settling Defendants agree to complete all such requirements.

H. The Parties shall assume any and all liability arising from or relating to their respective acts or omissions in the performance of the Work or their failure to perform fully or complete the requirements of this Decree.

I. The Parties agree and covenant that all remedial actions provided for by this Decree are limited to eastern Missouri Sites alleged by plaintiffs to have been contaminated as a result of actions attributable to Russell Martin Bliss or persons or business entities associated with him; and that the thermal treatment unit will be removed at the conclusion of the incineration of materials from those Sites in accordance with the Work Plan. Sites shown on Attachment A, List 3 are specifically excluded from remedial actions at Times Beach under the provisions of this Decree.

15. Permits and Approvals.

A. Each Party will prepare and submit for approval applications for all permits necessary for the performance of its obligations under this Decree and the Work Plans.

B. EPA and the State shall use best efforts to process expeditiously all permit applications received from or on behalf of any Party.

C. Settling Defendants will apply for a RCRA/Missouri Hazardous Waste Law permit for the thermal treatment facility. The permit shall be limited to the treatment of dioxin-

contaminated materials from Eastern Missouri sites, contaminated as a result of actions attributable to Russell Martin Bliss or persons or business entities associated with him.

D. As provided in the Work Plans, Settling Defendants, prior to obtaining a RCRA/Missouri Hazardous Waste Law permit for the thermal treatment facility, may commence construction of a ring levee to provide flood protection for the thermal treatment facility following validation by EPA and the State that the final levee design meets or exceeds the standards of the United States Army Corps of Engineers, as specified in the Work Plans. Validation of the levee design shall not constitute approval of the permit for the thermal treatment facility; however, after such validation of levee design, such permit shall not be denied on the basis of the design of the levee, and Settling Defendants assume the full financial risk for levee construction should the permit be denied.

16. Conveyance of the Facility.

A. Within thirty days of approval by this Court of this Decree, either the State or the United States shall record or file a copy of a notice of this Decree with the Recorder's Office, in the appropriate County within the State of Missouri with respect to each property identified in the complaints in the above captioned cases, and such properties identified in Attachment A, List 1, as requiring such notice, setting forth the style of the case, case numbers, and court having jurisdiction. At such time as a Certification pursuant to Attachment E is

issued for any Site, notice of said Certification shall also be filed for that Site with the appropriate Recorder's Office.

B. In the event of the alienation of any of the Facilities, the Parties shall continue to meet their respective obligations pursuant to this Decree.

C. With the approval of the United States and the State, the Trustee for Times Beach (or the State, if it holds title to Times Beach) may convey such right, title or interest in Times Beach as he/she deems appropriate, provided that:

(1) such conveyance comports with and will not interfere with the performance of the Work hereunder and such use restrictions as may be established by the State of Missouri for Times Beach;

(2) the transferee agrees to be bound and to bind any subsequent transferee, in writing, according to the use restrictions set forth in Attachment D;

(3) 90 percent (90%) of the proceeds of such conveyance are paid to the United States and the remaining 10 percent (10%) of the proceeds are paid to the State of Missouri; and

(4) such conveyance will not relieve the State from any obligations or requirements contained in Attachment D or any other part of this Decree.

VI. PERFORMANCE OF WORK

17. Contractors.

A. All Work to be performed by the Parties pursuant to this Decree shall be under the direction and supervision of qualified personnel.

B. By the date(s) specified in the Work Plans, Settling Defendants shall notify EPA and the State, in writing, of the name, title, and qualifications of any supervising contractor, and the names of principal contractors and/or subcontractors proposed to be used in carrying out the Work. Selection of any such contractor shall be subject to approval by EPA, after consultation with the State, which approval shall not be unreasonably withheld. EPA shall notify the Settling Defendants in writing of its approval or disapproval within 14 calendar days of receipt of the notice.

C. If, after the date(s) specified in B above, Settling Defendants wish to use other contractors or subcontractors in carrying out the Work, Settling Defendants shall provide notice, and EPA shall approve or disapprove, in accordance with B above.

D. If EPA disapproves of the selection of any supervising contractor, the Settling Defendants shall submit a list of contractors to EPA within 30 days of receipt of EPA's disapproval of the contractor previously selected. After consultation with the State, EPA shall, within 14 calendar days of receipt of the list, provide written notice of the names of the contractors that it approves. The Settling Defendants may at their election

select any one from that list. Settling Defendants shall notify EPA of the name of the contractor selected within 21 calendar days of EPA's notice of the approved contractor.

E. Except as otherwise expressly set forth herein, the Dispute Resolution provisions shall govern any dispute regarding the selection of contractors or subcontractors.

18. Work Plans. Attachment B includes Work Plans for the remedial action to be undertaken at the Times Beach Site, including the thermal treatment of Materials from the Facilities indicated in Attachment A, List 1. These Work Plans are incorporated into and made an enforceable part of this Decree. Settling Defendants shall perform the Work set out in the Work Plans in accordance with the Milestones therein and such other Milestones as are specified in the approved written submissions by Settling Defendants required in Attachment B.

19. The Work Plans and other required documents and reports have been reviewed, modified as necessary, and approved by EPA in consultation with the State.

20. Settling Defendants shall proceed to implement the Work detailed in the Work Plans at such times as are specified therein and in subsequently approved Work Plans. Settling Defendants shall not commence Work unless authorized by EPA or the Work Plans.

21. The Work contemplated by this Decree, as described in the Work Plans, is intended to achieve a cleanup standard consistent with the requirements of CERCLA, the National Contingency Plan

and all applicable regulations, by means of excavation and thermal treatment of soils contaminated with dioxin and appropriate land use restrictions. Excavations at the Facilities will be conducted so as to achieve 95 percent confidence that the average concentration of dioxin in soils is no higher than specified in Attachments B through D for each particular Facility, as described in the Work Plans. Land use and/or institutional controls will be employed at Times Beach as set forth in Attachment D. Areas within Times Beach determined by EPA to contain average concentrations between one and ten parts per billion, as described in the Work Plans, will be covered with at least one foot of clean soil and/or clean soil mixed with delisted ash.

VII. PERIODIC EPA REVIEW TO ASSURE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT

22. To the extent required by Section 121(c) of CERCLA, 42 U.S.C. §9621(c), and any applicable regulations, and except to the extent that the Facilities are certified as subject to a Special Covenant Not to Sue pursuant to Section 122(f)(2)(B) of CERCLA, 42 U.S.C. § 9622(f)(2)(B), EPA shall review the remedial action at the Facilities at least every five (5) years after the entry of this Decree to assure that human health and the environment are being protected by the remedial action being implemented.

23. Prior to certification of completion of the Work at the Times Beach Site, Settling Defendants shall conduct the requisite studies, investigations, or other response actions set forth in

the Work Plans in order that EPA may conduct any review of the Times Beach Site required by Section 121(c) of CERCLA.

24. Settling Defendants shall be provided with an opportunity to confer with EPA on any response action proposed during the EPA's 5-year review process and to submit written comments for the record during the public comment period. After the period for submission of written comments is closed, the Administrator shall, in writing, determine if further response action is appropriate.

VIII. QUALITY ASSURANCE AND SAMPLING

25. The Parties shall use quality assurance, quality control, and chain of custody procedures in accordance with the requirements of the Work Plans. Sampling data generated consistent with the quality control and chain of custody procedures set forth in the Work Plans shall be admissible as evidence, without objection as to authenticity, but without waiving any objections as to relevance or weight, in any proceeding under this Decree. Settling Defendants shall provide that EPA or MDNR authorized representatives are allowed access at reasonable times to any laboratory utilized by Settling Defendants in implementing this Decree.

26. Settling Defendants shall make available to EPA and the State the results of all sampling and/or tests or other data generated by Settling Defendants with respect to the implementation of this Decree.

27. Settling Defendants shall notify EPA and the State in advance of any sample collection activity in accordance with the Work Plans. In addition, EPA and the State shall have the right to take any additional samples that EPA or the State deems necessary. At the request of any Party prior to sampling, the sampling party shall provide splits or duplicate samples to the requesting Party.

28. None of the provisions of this Section shall be construed to limit the information gathering, inspection and enforcement authorities and rights of the United States and the State under CERCLA, RCRA and any other applicable statute or regulation.

IX. ACCESS

29. The State shall secure all necessary access for the Parties and their contractors and designees to arrange for or carry out Work at the Times Beach Site under the Decree. EPA and the State shall secure all necessary access to arrange for or carry out Work under this Decree for all Sites other than Times Beach.

30. Notwithstanding any provision of this Decree, the United States and the State retain all of their access authorities and access rights under CERCLA, RCRA and any other applicable statute or regulation.

X. REPORTING REQUIREMENTS

31. In addition to any other reports required herein, the Parties shall submit such reports as are required by the Work Plans.

32. Any party submitting a report required by applicable or relevant and appropriate federal or state law with respect to the Work hereunder shall send a copy of such report to the other Parties. Upon the occurrence of any release of a hazardous waste or hazardous substance during performance of the Work which requires reporting pursuant to federal or state law, including Section 103 of CERCLA and Section 311 of the Clean Water Act, the Party required to make such report shall also promptly orally notify the other Parties. Within 20 days of the occurrence of such an event, that Party shall furnish to the other Parties a written report setting forth the events which occurred and the measures taken, and to be taken, in response. Within 30 days of the conclusion of the actions in response to such release, that Party shall submit to the other Parties a report setting forth those actions.

XI. SUBMISSIONS REQUIRING AGENCY APPROVAL

33. Upon receipt of any plan, report or other item which is required to be submitted for approval pursuant to this Decree, EPA, after review and consultation with the State, shall either: (1) approve the submission; (2) disapprove the submission, notifying Settling Defendants of deficiencies and/or requiring modification of the submission; or (3) propose modification of the submission to cure the deficiencies.

34. In the event of an approval or modification acceptable to Settling Defendants, Settling Defendants shall proceed to take

any action required by the plan, report, or other item, as approved or modified.

35. Upon receipt of a notice of disapproval, or a proposed modification not acceptable to Settling Defendants, Settling Defendants shall respond within thirty (30) days. Notwithstanding the notice of disapproval, Settling Defendants shall not be excused from and shall proceed to take any action required by any approved, independent portion of the submission.

36. If the Parties cannot reach agreement regarding the response, then the Dispute Resolution provisions shall apply.

XII. REMEDIAL PROJECT MANAGER/PROJECT COORDINATORS

37. Within twenty (20) calendar days of the effective date of this Decree, the Parties shall notify each other, in writing, of the names, addresses and telephone numbers of any designated Project Coordinator(s) and Alternate Project Coordinator(s), and Remedial Project Managers/On-Scene Coordinator(s) (RPM/OSC) and Alternate RPM/OSC(s). If a Project Coordinator, RPM or OSC initially designated is changed, the identity of the successor shall be given to the other Parties as soon as practicable after the change, but in any event within five (5) working days.

38. Plaintiffs may designate other representatives, including EPA and State employees, and federal and state contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Decree. An RPM/OSC shall have the authority lawfully vested in an RPM/OSC by the National Contingency Plan, 40 C.F.R. Part 300. In addition, an RPM/OSC

shall have authority consistent with the National Contingency Plan, to halt, conduct, or direct any Work required by this Decree and to take or direct any necessary response action when he determines that conditions at a Facility may present an imminent and substantial endangerment to public health or welfare or the environment.

XIII. FINANCIAL ASSURANCE OF ABILITY TO COMPLETE WORK

39. Financial Assurance Provisions

A. Settling Defendants shall demonstrate their ability to complete the Work to be performed by them and to pay all claims that arise from the performance of such Work by obtaining, and presenting to EPA and the State for approval at least thirty (30) days prior to the entry of this Decree, one of the following: (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third party; or (4) internal financial information sufficient to satisfy Plaintiffs that Settling Defendants have adequate net assets to make it unnecessary to require additional financial assurances. Plaintiffs will have thirty (30) days from the receipt of the information or other assurance to make a determination of the adequacy of the financial assurance and to communicate that determination to Settling Defendants.

B. If Settling Defendants seek by means of internal financial information to demonstrate ability to complete the Work to be performed by them, they shall resubmit such information annually, contemporaneously with the filing of Syntex Corporation's Form 10-K with the Securities and Exchange

Commission. Plaintiffs will have thirty (30) days from the receipt of such information to inform Settling Defendants of any determination (which shall be reasonably made) that such information does not adequately demonstrate the financial ability of Settling Defendants to complete the Work then remaining to be performed by them.

C. In the event that Plaintiffs determine that any submission regarding financial assurance is inadequate, Settling Defendants shall, within thirty (30) days of receipt of notice of Plaintiffs' determination, either (1) revise and resubmit such information, addressing any deficiencies noted by Plaintiffs in the prior submission, or (2) obtain and present to EPA and the State for approval one of the other three forms of financial assurance listed above.

D. If the Parties cannot reach agreement concerning financial assurances, any Party make invoke the Dispute Resolution provisions herein.

XIV. NOTICES OF COMPLETION

40. Commencing no sooner than 12 months from the date of entry of this Decree, Settling Defendants shall submit an annual Notice of Completion specifying those Facilities and Materials for which all required Work, if any, including but not limited to the excavation and thermal processing of dioxin contaminated Materials, has been completed in full satisfaction of the Work described in the Work Plans, if any, for that Facility. Settling Defendants shall have the burden of establishing that all such

Work has been completed and shall so notify EPA and the State by submitting a written report by a registered professional engineer. If EPA and the State, after consultation, determine that all of said Work or any portion thereof to be completed by Settling Defendants has not been completed in accordance with the Work Plans, EPA shall notify Settling Defendants in writing of all activities that must be performed in order to complete said Work, consistent with the Work Plans, along with a schedule for performance of said Work. Settling Defendants shall either perform such Work or shall perform the Work resolved to be done pursuant to the Dispute Resolution provisions herein.

41. If EPA and the State conclude, after consultation, following the initial or any subsequent notification of completion by Settling Defendants that all Work with respect to any of the Facilities or Materials indicated in the annual Notice of Completion to be completed by the Parties, including Settling Defendants, has been fully performed in accordance with the Work as described in the Work Plans, EPA shall so certify in writing to Settling Defendants pursuant to Paragraph 74 herein for any such Materials or Facilities.

42. Failure of the Plaintiffs to perform any material aspect of the Work with respect to one or more Facilities, as set out in the Attachments C and D, shall not entitle the Settling Defendants to assert in any Notice of Completion that the Work with respect to the Facilities and Materials involved has been satisfactorily completed; however, such material failure on the

part of the Plaintiffs may constitute a Special Circumstance. Any disputes concerning a Notice of Completion will be resolved in accordance with the Dispute Resolution provisions herein.

XV. ENDANGERMENT AND FUTURE RESPONSE

43. In the event of any actual or threatened release, other than releases which are the subject of the underlying actions, caused by Settling Defendants at the Times Beach Site during performance of the Work which may present an imminent and substantial endangerment to public health or welfare or the environment, Settling Defendants shall immediately take all appropriate action to prevent, abate, or minimize such endangerment as may be required by law, including CERCLA, and shall immediately notify the representatives identified pursuant to Section XII. If the Federal RPMs are unavailable, the EPA Emergency Response Unit, Region VII, shall be notified. Settling Defendants shall take any such action in a manner not inconsistent with all applicable provisions of the Work Plans. In the event that EPA or the State determine that Settling Defendants have failed to take such action, EPA or the State shall so notify Settling Defendants. If Settling Defendants thereafter fail to take such action, EPA and/or the State may take such action and Settling Defendants shall, subject to the Dispute Resolution provisions herein, reimburse all costs of the response action to the extent required by CERCLA. Payment of such response costs shall be made in the manner described in Section XXI within thirty (30) days of

Settling Defendants' receipt of demand for payment and an appropriate accounting of the costs incurred.

XVI. PAYMENTS BY SETTLING DEFENDANTS

44. By April 1, 1991 or within 30 days of issuance of all final permits necessary for the operation of the incinerator, including a final RCRA incineration permit containing operating requirements based upon a trial burn under 40 C.F.R. { 270.62(b)(10), whichever is sooner, Settling Defendants shall commence the payment of $10 million ($10,000,000) to the United States. Said payments shall be made in accordance with 40 C.F.R. Part 13 and shall be made in annual installments of $2 million ($2,000,000) until the entire amount has been paid. Any late payment shall bear interest at a fluctuating interest rate per annum equal at all times to two (2) percent per annum above the rate of interest announced publicly by the Chase Manhattan Bank in New York, New York from time to time as Chase Manhattan's prime rate (Prime Rate) for the time period during which such amount is overdue, each change in such fluctuating interest rate to take effect simultaneously with the corresponding change in the Prime Rate.

45. The $10 million shall be deemed to be paid in settlement of claims for costs incurred by the United States in connection with those Facilities indicated in Attachment A, List 1, which are addressed in the above-captioned cases brought by the United States.

46. Payments to the EPA Hazardous Substances Superfund shall reference "Superfund Accounting, United States v. Bliss, et al.,

Civil No. 84-200C(1)" and shall be in the form of a wire transfer to:

Credit Account No. 910-9070
ABA # 043000261/Mellon Bank West
Pittsburgh-EPA-Region VII-Kansas City
Pittsburgh, Pennsylvania

47. The State of Missouri, pursuant to Paragraph 14, will pay ten percent (10%) of all remediation costs of the United States in connection with the Facilities indicated in Attachment A, List 1. Payment, less any applicable credits, shall be made within 60 days of the conclusion of all Work, as indicated in the previous Paragraph.

48. Copies of all payments or receipt thereof paid pursuant to this Section shall be sent to the Regional Counsel, EPA-Region VII, and to counsel for the United States. All such copies shall indicate on their face the Department of Justice number # 90-11-2-41.

49. The payments under this Section are for costs which are not inconsistent with the National Contingency Plan.

XVII. RESPONSIBILITY FOR RISK AND INSURANCE

50. Each Party will bear the risk and expense of any liability arising out of the Work to be performed by or on behalf of that Party under this Decree.

51. Prior to commencing any on-site Work, Settling Defendants, or their contractors as appropriate, shall secure, and shall maintain for the duration of this Decree, comprehensive general liability and automobile insurance with limits of ten million dollars, combined single limit, naming as additional insureds the

United States and the State. In addition, for the duration of this Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of workmen's compensation insurance for all persons performing Work on behalf of Settling Defendants in furtherance of this Decree. Prior to commencement of Work under this Decree, Settling Defendants shall provide to EPA and the State certificates of such insurance and, upon request, a copy of any insurance policy. If Settling Defendants demonstrate by evidence satisfactory to EPA and the State that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. SPECIAL CIRCUMSTANCES

52. Special Circumstances are events which, because of the unique nature of the mixed-work obligations of the Parties pursuant to this Decree, will be treated as Force Majeure events. The following events shall constitute Special Circumstances for purposes of this Decree:

1) Delay, beyond the schedule(s) set forth in the Work Plans, in providing access for Settling Defendants to Times Beach pursuant to Section IX;

2) Delivery of Materials by or on behalf of EPA or the State not in compliance with the Schedule(s) set forth in the Work Plans;

3) Delivery of Materials by or on behalf of EPA or the State not in compliance with the specifications set forth in the Work Plans; and

4) EPA's refusal to issue a certification, pursuant to Paragraph 74 and Attachment E hereof, where such refusal is based on EPA's or the State's failure to complete Work at any Facility.

Except as otherwise explicitly provided in this Decree, the Parties intend and agree that any causes of action that Settling Defendants may have under the Federal Tort Claims Act, 28 U.S.C. {{ 1346(b), 2671-2680; the Tucker Act, 28 U.S.C. {{ 1346(a), 1491-1506; or other applicable law, that may arise out of the occurrence of any Special Circumstances or any other event, are expressly reserved.

XIX. FORCE MAJEURE

53. Force Majeure is defined for purposes of this Decree as an event arising from causes beyond the control of Settling Defendants and of any entity controlled by Settling Defendants, including their contractors and subcontractors, which delays or prevents the performance of any obligations under this Decree and which cannot be overcome with due diligence on the part of Settling Defendants. Force Majeure does not include

unanticipated or increased costs, other than as provided by case law dealing with economic impossibility or frustration.

54. When circumstances occur which may delay or prevent the completion of any Milestone contained in Attachment B, whether or not caused by a Force Majeure event, Settling Defendants shall notify the relevant EPA RPM/OSC(s) (or, in the event of his/her unavailability, the Director of Waste Management Division, EPA Region VII) and the relevant MDNR RPM/OSC(s) (or, in the event of his/her unavailability, the MDNR Director of the Waste Program) orally of the circumstances within two (2) working days after Settling Defendants first become aware that such circumstances may delay or prevent the completion of any Milestone. Within ten (10) working days after Settling Defendants first become aware of such circumstances, Settling Defendants shall provide a written Notice of Delay to Plaintiffs containing an explanation of the cause(s) of any actual or expected delay or noncompliance, the anticipated duration of any delay, the measures taken and/or to be taken by Settling Defendants to prevent or minimize the delay or correct the noncompliance, and the timetable for implementation of such measures. Any material delay in giving such notice shall create a rebuttable presumption that no Force Majeure event has occurred.

55. If EPA, in consultation with the State, agrees that a delay is or was caused by a Force Majeure event, the Parties may, pursuant to Section XXX of the Consent Decree, request Modification of the appropriate Work Plans and any other relevant

documents and submissions to provide such additional time as may be necessary to allow the completion of the specific phase of the Work and/or any succeeding phase of the Work affected by such delay, which additional time shall be no longer than the actual delay resulting from the Force Majeure event. Any dispute under this Section shall be subject to the Dispute Resolution provisions herein. In proceedings on any dispute regarding a delay in performance or other noncompliance, Settling Defendants shall have the burden of proving (1) that the delay or noncompliance is or was caused by a Force Majeure event, and (2) that the amount of additional time requested is appropriate.

56. Delay in achievement of any Milestone established by the Work Plans and/or other relevant documents shall not automatically justify or excuse delay in achievement of any subsequent Milestone.

57. Settling Defendants shall be deemed to be currently in full compliance with this Decree notwithstanding the non-performance of any obligation caused by the occurrence of a Force Majeure event. Nothing in this Section shall be construed to require the Administrator to grant certification pursuant to Paragraph 74 with respect to any aspect of the Work which is not completed.

XX. DISPUTE RESOLUTION

58. Any dispute between or among any of the Parties to this Decree as to any obligation, requirement or other issue under this Decree shall in the first instance be the subject of negotiation pursuant to this Paragraph. If any Party believes

that it has a dispute with any other Party, it shall give all other Parties written notice thereof, in accordance with Section XXVIII, concisely describing the matter(s) in dispute. Representatives of the Parties shall promptly confer and attempt expeditiously and in good faith to resolve the dispute. The negotiation may involve such consultation, communications, and meetings as may be effective in satisfactorily resolving the dispute. If requested by a Party to the dispute, a facilitator acceptable to and paid by all Parties to the dispute may be invited to aid in the negotiation.

59. If the dispute is resolved through negotiation, any Party to the dispute, within ten days of such resolution or such other period as may be agreed to, may petition this Court for an appropriate modification of this Decree.

60. If the Parties to the dispute are unable to resolve the dispute within thirty (30) days after giving the written notice or such other period of time as may be mutually agreed upon (the negotiation period), then, within five days after the expiration of the negotiation period, each Party shall set forth its position in writing and furnish it to the other Parties.

61. If the dispute is not resolved through negotiation, any Parties to the dispute, within five days after the expiration of the negotiation period, may move this Court to resolve the dispute, with notice to all Parties. In an emergency, any Party to the dispute may so move prior to the expiration of the negotiation period.

62. Any legal dispute relating to the interpretation of this Decree, including any provision thereof, shall be determined by this Court de novo upon the preponderance of the evidence. Any dispute regarding whether 1) stipulated penalties are due; 2) a Force Majeure event has occurred; 3) whether a Special Circumstance event has occurred; or 4) a payment due under this Decree has been paid, shall be determined by this Court de novo upon the preponderance of the evidence. For any other issues, the scope and standard of judicial review shall be as this Court determines to be appropriate.

XXI. STIPULATED PENALTIES

63. Except where there is a Special Circumstance or Force Majeure event, stipulated penalties to be paid by Settling Defendants shall accrue for any failure to achieve a Milestone or submit Critical Reports as expressly required by the Work Plans at Attachment B. Separate penalties in the following amounts shall accrue for each such failure as to Milestones 1, 5, and 6:

Period of Delay	Penalty Per Violation Per Day
1st through 7th day	$500
8th through 30th day	$2500
31st through 60th day	$5000
Beyond 60 days	$10,000

Separate penalties in the following amounts shall accrue for each such failure as to Milestones 2, 3, and 4:

Period of Delay	Penalty Per Violation Per Day
1st through 14th day	$500
15th through 60th day	$1500
Beyond 60 days	$5000

Separate penalties in the amount of $500 per day shall accrue for failure to timely submit a Critical Report as specified in Attachment B. Such payments shall be in the form of a certified or cashier's check made out to:

EPA Hazardous Substances Superfund.
P.O. Box 371003M
Pittsburgh, Pennsylvania 15251.

Stipulated penalties may be waived or reduced for good cause shown, including, but not limited to, reasonable good faith efforts to achieve Milestones.

64. EPA shall, upon obtaining information that causes it reasonably to believe that Settling Defendants will not achieve any Milestone, send a written notice to Settling Defendants. Upon failure of Settling Defendants achieve to any Milestone, EPA shall send a written notice of noncompliance to Settling Defendants. Except as otherwise provided in Paragraph 68 below, penalties shall begin to accrue on the day that performance is due or noncompliance occurs, provided that EPA notifies Settling Defendants within seventy-two (72) hours of such noncompliance. In the event EPA fails to provide such notice within seventy-two (72) hours of such noncompliance, penalties shall begin to accrue upon Settling Defendants' receipt of such notice. Penalties shall continue to accrue through the final day of noncompliance.

65. Except for penalties for failure to timely submit a Critical Report (which shall be paid directly as indicated in this Section), all penalties due to EPA under this Section shall be deposited, within thirty (30) days of receipt by Settling

Defendants of the notice of noncompliance, in a federally insured bank or savings account created by Settling Defendants in trust for the EPA Hazardous Substances Superfund. Interest shall begin to accrue on the unpaid balance at the end of the thirty-day period, at the rate established by the Department of the Treasury under 31 U.S.C. { 3717. Upon payment into the trust account, Settling Defendants shall notify counsel for the United States and shall specify the Milestone involved, the DOJ number 90-11-2-41, and the civil action numbers of the above-captioned cases.

66. Within thirty (30) days of completion of the Work, the balance of the trust account shall be paid by certified or cashier's check to:

EPA Hazardous Substances Superfund
P.O. Box 371003M
Pittsburgh, Pennsylvania 15251

and shall specify DOJ number 90-11-2-41 and the civil action numbers of the above-captioned cases. A copy of any checks mailed to the Superfund pursuant to this provision shall be provided to the Regional Counsel, EPA-Region VII, and to counsel for the United States.

67. The stipulated penalties set forth above shall be in lieu of any statutory penalties which may be available to the United States or the State or their Agencies or Departments by reason of Settling Defendants' failure to comply with requirements of this Decree. Payment of stipulated penalties shall not preclude EPA or the State from electing to pursue any injunctive remedy to enforce this Decree, and nothing shall preclude EPA or the State

from seeking statutory penalties against Settling Defendants for violations of statutory or regulatory requirements other than those for which stipulated penalties apply.

68. Settling Defendants may dispute EPA's right to stipulated penalties or to the amount of penalties by invoking the Dispute Resolution procedures under Section XX. Any penalties imposed under Paragraph 63 which are disputed shall be placed in the trust account in accordance with the procedures specified in Paragraph 65. Upon resolution of the dispute by this Court, it shall determine when the penalties commenced and how long they continued to accrue and shall fix penalties accordingly. In the event of an appeal, such penalties shall remain in the trust account until a decision has been rendered by the final court of appeal. Neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way Settling Defendants' obligation to complete the performance required hereunder. Except for any penalties that may be imposed for late submission of Critical Reports as specified in Attachment B, any penalties that have accrued for failure to achieve any Milestone shall be excused if Settling Defendants timely achieve the final Milestone as specified in the Work Plans.

69. No payments made under this Section shall be tax deductible.

XXII. CONSISTENCY WITH NATIONAL CONTINGENCY PLAN

70. The United States and the State agree that the Work, if properly performed as set forth in the Work Plans, is consistent

with the provisions of the National Contingency Plan pursuant to 42 U.S.C. { 9605.

XXIII. RESPONSE AUTHORITY

71. Nothing in this Decree shall be deemed to limit the response authority of the United States or the State under federal laws, including CERCLA and RCRA, or the State under Missouri laws, including Chapter 260, Revised Statutes of Missouri, and regulations and rules adopted thereunder, provided, however, that the liability of the Settling Defendants arising out of any such action will be limited in accordance with the Covenant Not to Sue provisions herein.

XXIV. COVENANT NOT TO SUE

72. In consideration of the actions which will be performed and the payments which will be made by the Settling Defendants under the terms of the Decree, and except as otherwise specifically provided in this Decree, the United States and the State agree and covenant not to sue or take administrative action against Syntex for Covered Matters. With respect to all Covered Matters except Future Liability, this Covenant Not to Sue will take effect at such time as this Court has entered this Decree. With respect to any claims for Future Liability, this Covenant will take effect as to any Facility or Materials at such time as EPA certifies completion in accordance with Paragraph 74 and in the form set forth in Attachment E.

73. General Reservation of Rights. The Covenants Not to Sue will not pertain to any defendants other than the Settling

Defendants or to any matters other than those expressly set forth herein as Covered Matters. The United States and the State reserve all rights against Settling Defendants with respect to all other matters, including, but not limited to:

(a) Liability for any past, present, or future releases at any sites or facilities other than those indicated in Attachment A.

(b) Liability arising from the disposal or treatment of any dioxin contaminated Materials (except delisted ash) by the Settling Defendants at locations other than indicated in Attachment A, as authorized in the Work Plans;

(c) Criminal liability;

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

(e) Any matters for which the Settling Defendants bear the risk under Section XVII hereof;

(f) Liability for violations of federal or State law which occur during implementation of the remedial action; and

(g) With respect to claims by the United States only, liability for any damages for injury to natural resources which Interior has not expressly agreed to resolve either through settlement or a Covenant Not to Sue.

Notwithstanding any other provision of this Decree, the United States and the State retain all authority and reserve all rights to take any and all response actions authorized by law, including actions regarding any future arrangement for disposal attributable to the Settling Defendants at the Facilities indicated on Attachment A or any other site; provided, however, the liability of the Settling Defendants arising out of any such action will be limited in accordance with the Covenant Not to Sue provisions herein.

74. Certification. Within six (6) months of receipt of a Notice of Completion from the Settling Defendants pursuant to Section XIV, the Administrator or his delegate shall certify, in the form set out in Attachment E, with respect to such Notice:

(a) whether the Work has been satisfactorily completed in accordance with the requirements of the Work Plans; and

(b) whether all payments by the Settling Defendants pursuant to this Decree which are then due have been paid; and

(c) whether the materials (i.e., those materials whose hazardous constituents are treated so as to be destroyed, eliminated or permanently immobilized under the Work Plans) have been destroyed, eliminated, or permanently immobilized such that, in the judgment of the Administrator (i.e., a judgment reflected in the Work Plans previously

approved by EPA and the State and now based solely upon satisfaction of such Work Plans): they no longer present any current or currently foreseeable future significant risk to public health, welfare or the environment; that no byproduct of the treatment or destruction process presents any significant hazard to public health, welfare, or the environment; and that all byproducts are themselves treated, destroyed, or contained in a manner which assures that such byproducts do not present any current or currently foreseeable future significant risk to public health welfare, or the environment.

75. Upon certification in the form set out in Attachment E, Syntex will be deemed to have received Special Covenants Not to Sue to the fullest extent permissible under Section 122(f)(2)(B) of CERCLA, 42 U.S.C. { 9622(f)(2)(B). To the extent Syntex does not receive a Section 122(f)(2)(B) Special Covenant, then Syntex will be deemed to have received a Discretionary Covenant under Section 122(f)(1) of CERCLA, 42 U.S.C. { 9622(f)(1). Any dispute regarding the scope of, or failure to issue, any such Special Covenant shall become ripe for resolution only upon notice to the Settling Defendants of intent to reopen pursuant to Section 122(f)(6) of CERCLA, 42 U.S.C. { 9622(f)(6), and shall thereafter be subject to the Dispute Resolution provisions herein.

76. Reopener Provisions. Other than and subject to Paragraph 75, notwithstanding any other provision of this Decree, and except to the extent that a Special Covenant Not to Sue is given pursuant to Section 122(f)(2)(B) of CERCLA, 42 U.S.C. { 9622(f)(2)(B), the Plaintiffs reserve the right to institute proceedings in this action or in a new action or to issue an Administrative Order seeking to compel any person, including the Settling Defendants, to perform any additional response actions at any Facility or to reimburse the United States or the State for additional response actions, not otherwise specified in this Decree or Attachments B through E, and performed by the United States or the State at or in connection with such Facilities if,

(1) prior to certification by EPA of satisfactory completion of the Work with respect to a Facility:

(i) conditions at a Facility specified in Attachment A, previously unknown to the Relevant Agencies (i.e., the Land and Natural Resources Division of the United States Department of Justice; EPA; the United States Army Corps of Engineers, CDC and ATSDR, Interior and FEMA, to the extent these agencies were concerned with the release of dioxin in Missouri arising out of the facts in the underlying actions herein or the health effects attendant thereto; the Missouri Attorney General; MDNR, the Missouri

Department of Health (MDH), the Missouri Emergency Management Agency, and the Missouri Department of Conservation) are discovered after the entry of this Decree, or

(ii) information with respect to a Facility specified in Attachment A is received, in whole or in part, after the entry of this Decree.

and the EPA Administrator or his delegate finds, based upon these previously unknown conditions or information, in the context of the facts comprising the record, that the remedy may not be protective of public health, welfare and the environment, provided, however, nothing in this Section relating to reopener provisions will affect the standard of liability of Settling Defendants under CERCLA; or, if

(2) subsequent to certification by EPA of satisfactory completion of the Work with respect to a Facility:

(i) conditions with respect to a Facility specified in Attachment A, previously unknown to the Relevant Agencies, are discovered after Certification, or

(ii) information with respect to a Facility specified in Attachment A is received, in whole or in part, after certification,

and the EPA Administrator or his delegate finds, based upon these previously unknown conditions or information, in the context of the facts comprising the record, that the remedy may not be protective of public health, welfare and the environment, provided, however, nothing in this Section relating to reopener provisions will affect the standard of liability of Settling Defendants under CERCLA.

77. The terms "previously unknown conditions" and "information received after entry of this Decree or after Certification" as used in this Section do not include: (a) a new analysis of the same information comprising the record of the initial remedy selection decision reflected in the Work Plans; (b) the selection of different applicable or relevant and appropriate requirements under Section 121(d) of CERCLA unless such selection is based upon previously unknown conditions or new information; or (c) with respect to part (2) of the preceding Paragraph, facts known to the Relevant Agencies at the time EPA certifies completion of the Remedial Action and, with respect to part (1) of the preceding Paragraph, facts known to the Relevant Agencies at the time this Decree is entered. Notwithstanding anything else in this Section, nothing in the preceding sentence is intended to preclude the Plaintiffs from re-examining the conditions, information, or facts comprising the record on remedy selection in light of additional information, conditions or facts, should

such additional information, conditions or facts be received by the Relevant Agencies.

78. Notwithstanding any other provision of this Section concerning Reopener Provisions, the Administrator may only reopen upon a finding based on the best scientific judgment available to EPA that unknown conditions or new information exist and that such new information or unknown conditions, in the context of the facts comprising the record, indicate that Remedial Action is necessary and appropriate to assure protection of public health, welfare and the environment. Such action by the Administrator shall be subject to the Dispute Resolution provisions herein.

79. Notwithstanding any other provision in this Decree, the Covenant Not to Sue in this Section shall not relieve the Settling Defendants of their obligation to meet and maintain compliance with the requirements set forth in this Decree, including the conditions in the ROD and Attachment B, which are incorporated herein, and the United States and the State reserve their rights to take response actions at the Facilities in the event of a material breach of the terms of the Decree and to seek recovery of costs incurred after entry of the Decree, from any person, including Settling Defendants: (1) resulting from such a breach; (2) relating to any portion of the Work funded or performed by the United States or the State as a result of such breach; or (3) incurred by the United States or the State as a result of having to seek judicial assistance to remedy conditions at or adjacent to the Facilities because of such breach.

80. Nothing in this Decree shall constitute or be construed as a release or a Covenant Not to Sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity other than Syntex not a signatory to this Decree for any liability it may have arising out of or relating to the Facilities. Plaintiffs expressly reserve the right to initiate or maintain a suit against any person other than Syntex in connection with the Facilities.

81. This Covenant Not to Sue has been determined to be in the public interest and will expedite response actions with respect to the Facilities which are consistent with the National Contingency Plan under Section 105 of CERCLA, 42 U.S.C. { 9605.

XXV. COVENANTS BY SETTLING DEFENDANTS

82. Settling Defendants hereby covenant not to sue the United States or the State for any claim for reimbursement from the Hazardous Substances Superfund or for any claims arising out of the negligence of Settling Defendants. Nothing in this 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. { 300.25(d). The Settling Defendants reserve the right to contest, defend against, and assert claims in any action or proceeding brought against them under the preceding Section XXIV.

XXVI. CONTRIBUTION, CONTRIBUTION PROTECTION, OTHER SETTLEMENTS

83. Contribution. Pursuant to Section 113(f)(3)(B) of CERCLA, 42 U.S.C. { 9613(f)(3)(B), the Settling Defendants may seek contribution from any person who is not a party to this settlement; however, pursuant to Section 113(f)(3)(C) of CERCLA, 42 U.S.C. { 9613(f)(3)(C), the rights of the Settling Defendants in any such action for contribution shall be subordinate to the rights of the United States and the State.

84. Contribution Protection. Pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. { 9613(f)(2), Syntex shall not be liable for claims for contribution regarding Covered Matters or any other matters addressed in this settlement. Such settlement does not discharge any of the other potentially responsible parties (PRPs) for claims arising out of the facts alleged in the above-referenced actions and the sites specified in Attachment A; however, the potential liability of those PRPs to the United States is reduced by the amount of the settlement herein.

85. Settlements with Other Potentially Responsible Parties. Nothing herein shall be construed to affect the authority of the United States or the State to reach other settlements with PRPs or to limit the ability of those PRPs to obtain contribution protection pursuant to CERCLA in such settlements.

XXVII. RETENTION OF RECORDS, ACCESS TO INFORMATION

86. The Parties shall preserve and retain all records and documents in their possession or control, including all such records and documents which have been generated by their agents

and/or contractors, that relate in any manner to their actions pursuant to this Decree and to the Facilities until at least ten (10) years after all procedures described in the Covenant Not to Sue provisions in Section XXIV, except for any potential reopener pursuant to that Section, have been concluded. After this document retention period, any Party wishing to dispose of such records or documents shall notify the other Parties at least ninety (90) calendar days prior to the destruction of any such records or documents. In the event that federal law imposes more stringent record keeping requirements on the United States, the United States will conform its actions to such requirements.

87. Settling Defendants shall provide to EPA and/or the State, upon request, all non-privileged documents and information within their possession and/or control or that of their contractors or agents relating to performance of the Work as specified in the Work Plans or to the implementation of this Decree, including sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, correspondence, or other documents or information related to remedial activities. Settling Defendants shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with non-privileged knowledge of relevant facts concerning the performance of the Work. Nothing herein shall preclude the United States from seeking under CERCLA all factual information available to Settling Defendants concerning conditions at the Sites or the

activities and potential liability under CERCLA of parties other than Syntex.

88. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this 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 specific documents or information when they are submitted to EPA and/or the State, 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.

89. No claim of confidentiality shall be made with respect to any sampling or analytical data or any other documents or information evidencing conditions at or around the Sites.

XXVIII. MISSOURI REGISTRY AND OTHER NOTICES AND SUBMISSIONS

90. MDNR shall notify the other Parties at least ten days in advance of its annual Site Assessment Committee Meeting. MDNR shall also notify the other Parties when it receives requests to change the classification of or delete a site from the Registry of Confirmed Abandoned or Uncontrolled Hazardous Waste Disposal Sites in Missouri.

91. Whenever, under the terms of this 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 and the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Decree with respect to the United States, EPA, the State, and the Settling Defendants, respectively.

<u>As to the United States and EPA</u>:

Chief, Environmental Enforcement Section
Land and Natural Resources Division
Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Re: DOJ # 90-11-2-41

and

Regional Counsel
United States Environmental
Protection Agency-Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101

and

EPA Remedial Project Manager
United States Environmental
Protection Agency-Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101

<u>As to the State</u>:

Attorney General
State of Missouri
8th Floor, Broadway Office Bldg.
P.O. Box 899
Jefferson City, MO 65102-0899

and

State Project Coordinator
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

As to the Settling Defendants:

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David J. Freeman, Esq.
Holtzmann, Wise & Shepard
745 Fifth Avenue
New York, New York 10151

Mr. Gary J. Pendergrass
Manager, Environmental Projects
Syntex Agribusiness, Inc.
P.O. Box 1246
Springfield, Missouri 65801

XXIX. COMMUNITY RELATIONS

92. Settling Defendants shall cooperate with EPA and the State in providing information regarding the Work to the public. As requested by EPA or the State, 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 or the State to explain activities at or relating to the Facilities.

XXX. MODIFICATIONS

93. No material Modification shall be made to this Decree without written notification to and written approval of the Parties and this Court. A Party seeking Modification shall notify the other Parties pursuant to Section XXVIII herein. Such notification shall set forth the nature of and reasons for the

requested Modification. No oral Modification of this Decree shall be effective. Modifications that do not materially alter the requirements of this Decree may be made upon the written consent of all Parties, which consent shall be filed with this Court.

94. "Additional Work" means minor Modifications to the Work specified in the Work Plans that do not invoke the reopener provisions in Section XXIV that may be necessary to meet the Performance or Clean-up Standards set out in Attachments B, C and D, to protect human health or the environment, or accomplish the goals set forth in the ROD. In the event EPA, the State or the Settling Defendants determine that such Additional Work is necessary, notice will be provided to the representatives identified pursuant to Section XII.

95. Any Additional Work determined to be necessary by the Settling Defendants or the State is subject to approval by EPA and shall be completed in accordance with the standards, specifications, and schedules approved by EPA.

96. In the event that the Parties cannot reach agreement on Additional Work to be performed or any other Modification of this Decree, the Dispute Resolution provisions shall apply.

XXXI. RETENTION OF JURISDICTION

97. This Court will retain jurisdiction for the purpose of enabling any of the Parties to apply to this Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this

Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with the Dispute Resolution provisions herein.

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

98. This Decree shall be lodged with this 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 Decree disclose facts or considerations which indicate that the Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Decree without further notice.

XXXIII. EFFECTIVE AND TERMINATION DATES

99. The effective date of this Decree shall be the date upon which this Decree is entered by this Court.

100. This Decree shall terminate upon motion of any Party made after such time as all procedures set forth in the Covenant Not to Sue provisions in Section XXIV, except for any potential reopener pursuant to that Section, have been concluded. Termination of this Decree shall not affect the operation or validity of any provision of this Decree, such as the Covenants Not to Sue, the reopener provisions and the obligation to maintain records, which may take place after the time of termination, nor shall it affect any other continuing obligation of the Parties under this Decree.

XXXIV. SIGNATORIES

101. Each undersigned representative of the Parties to this Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind the Parties to this document.

SO ORDERED, THIS ____ DAY OF _____, 1990.

_____
JOHN F. NANGLE, Chief Judge
United States District Court

THE UNDERSIGNED PARTIES enter into this Consent Decree.

FOR THE UNITED STATES OF AMERICA

Date: July 19, 1990

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Assistant Attorney General

Steven R. Baer
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FOR THE STATE OF MISSOURI

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Department of Natural Resources

STEPHEN G. JEFFERY, General Counsel
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Date 7/19/90

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Date: July 18, 1990

ATTACHMENT A
(List 1)*

Sites from which dioxin-contaminated soil may be thermally treated at Times Beach pursuant to "Record of Decision for Final Management of Dioxin-Contaminated Soil and Final Disposition of Structures and Debris at Times Beach, Missouri and the Minker/Stout/Romaine Creek Site" September 29, 1988. They are the "Horse Arenas" litigation sites.

1. Access Road to Highway 141 (Includes Arnold Home sites and Simpson Landfill Access Road)
2. Arkansas Best Freight
3. Baxter Garden Center
4. Bliss Tank-Frontenac
5. Bliss-Ellisville (Includes Mid America Arena, Bliss-Strecker Road, Simmons Property, Callahan Farm/Caulks Creek and Rosalie Site)
6. Bonifield Brothers Trucking
7. Bristol Steel
8. Bubbling Springs
9. Bull Moose Tube
10. Castlewood (Includes Sontag Road)
11. Community Christian Church
12. East North Street-Eureka (Includes Southwestern Bell)
13. East Texas Motor Freight
14. Jones Truck Lines
15. Manchester Methodist Church
16. Minker Site (Includes Minker/Stout/Romaine Creek, Minker Neighbors, Minker Vicinity Wells, Romaine Creek, Hutchinson Residence, Cashel Residence, Mastis Spring, Stout Site, Stout Area Neighbors Subsite, Sullins Residence, Tara Hills)
17. Overnite Transportation Company (Includes Pacific Intermountain Express, Hall Street Terminal)
18. P. J. Hamil Transfer Company
19. Quail Run (Includes Chlanda and Mahaney Residences)
20. Rosati/Piazza Road (Includes Wall Property, Gravier Residence, Route KK in Vicinity of Johnson/Lewis Property near Piazza Road, Bliss Farm Road, Bliss Farm Site)
21. Saddle and Spur Stables
22. Sandcut Road/Lacy Manor
23. Shenandoah Stables
24. Southern Cross Lumber
25. Timberline Stables
26. Times Beach (Includes Meramec River adjacent to Times Beach - Sediment only)
27. Hellwig Fruit Stand

*Consent Decree governs extent of releases available to Settling Defendants.

Attachment A
(List 2)**

Sites in southwest Missouri where Northeastern Pharmaceutical and Chemical Company dioxin-contaminated waste was buried and subsequently excavated and thermally treated in the Environmental Protection Agency's (EPA) Mobile Incineration System as part of EPA research demonstration project.

1. Baldwin Park, Verona, Missouri (Trench Only)
2. Neosho, Missouri (Campus Area Only, Includes Spill Area, Bunker Soil/Residue and Tank Asphaltic Material)
3. Rusha Farm (Spill Area Only)
4. Talley Farm (Spill Area Only)

** Sites on this List shall be treated the same as sites on List 1, except no certification shall be required for the release to be effective, inasmuch as the response has already been performed.

ATTACHMENT A
(List 3)***

(Sites identified as possible locations where Russell Bliss sprayed waste oil.) EPA has taken and analyzed samples from these sites. Based upon this sampling and analyses, EPA and the State have found no dioxin concentrations above health-based levels. Accordingly, EPA and the State have determined that no further action is necessary and no remedial action (including the transportation to Times Beach or incineration of soil at Times Beach) will be taken at these sites.

EPA Name

1. Abraham Residence
2. Access Road to West Lake Quarry
3. Amber Ridge School
4. Arrowhead Campground
5. Azcon Scrap
6. Bath and Tennis Club
7. Beaufort Truck Line
8. Blue Bar Farm
9. Boulder Valley Campground
10. Branch Express
11. Otis Brown Stables
12. Busher Bottoms
13. Boy's Town Horse Show
14. Bridle Spur Hunt Club (Mental Health Show)
15. Casey Lane or Breeden Residence
16. Cassens Transport Company
17. Joe Cavallero Arena, Residence, or Property
18. Chain of Rocks Amusement Park
19. Chesterfield Legion Hall
20. Chief Trucklines a/k/a Morrison Motor Freight
21. Chott Residence
22. Chronister Residence
23. Commercial-Lovelace Freight
24. Consolidated Freightways
25. Coresande Beach Road
26. Costello Residence
27. Courtois Residence
28. Douglas Residence
29. Earl Roberts Residence
30. Eaton Residence
31. Ellisville Athletic Assn.
32. Emerald View Stables (Hudson Arena)
33. Fabick Farm Roads
34. Femmer Road
35. First Baptist Church
36. Former Ford Dealership

37. Francis & Dee's Cafeteria
38. Frisco Transportation (Back Parking Lot)
39. Gates Estates
40. Gavel Residence
41. General Motor or Motors Freight
42. Geodecke, Wood & Co. a/k/a Geodecke Wood Construction
43. 8888 Hall a/k/a Eastern Trucking
44. Bill Hall Property
45. Hall's Motor Transit
46. Hays Residence
47. Hazel Crest Drive
48. HBE Trailer Corp
49. High Trails Stables
50. Holiday Valley Recreational
51. Horse Palace Association
52. Houlihan's Driveway
53. House Springs Ball Park
54. Howe Residence
55. IML Freight, Inc.
56. Interstate Motor Freight
57 Jefferson City Landfill
58. Jesse's Grill
59. Jones Site
60. Kemper Farm
61. Keoning Residence
62. Kesmer Farm
63. Fred Komma Residence
64. Land Clearance Redevelopment a/k/a Continental Trailways
65. Landmark Farms a/k/a L&S Farms
66. Laurel Haven School
67. Little Tavern Road
68. Manchester
69. Mill Road Meadows
70. Miller Ray Subdivision
71. MK Bus Lines
72. Moore Quality Farms
73. Mounted Police Unit or St. Louis Police Dept. Arena
74. Norfolk and Western Railway, Luther Yards
75. OK Trucking
76. Orschlen Bros.
77. Orthwein Barn
78. Outlook Drive
79. Ozark Truck Plaza
80. Parkedge Drive
81. Pfitzinger Ambulance Service
82. Pic-Walsh Freight
83. Prater Residence
84. Private Drive off 100 Erxleben
85. I-55 Raceway or Dragstrip
86. Redbud Subdivision (Country Club Manor)
87. Regina Drive
88. Reidy Terminal, Inc.

89. Riss International
90. Rustman Bus
91. Ryder Truck Line
92. Schwartz Residence
93. Charles Shaw Residence
94. SOS Rental
95. Sullivan Dragstrip
96. Taetz Quarry
97. TMX Trucklines
98. Transamerica Freight Lines
99. Trans Con Lines (Western Gillette)
100. Transport Int'l Pool
101. Transport Int'l Pool #2
102. Truss Components
103. Venture Farms a/k/a Vatternot (Vatternol)
104. Vespy Property
105. Viemann Farms (Country Development Farm)
106. Vista Sites a/k/a Del Vista Acres a/k/a Villa Ridge a/k/a Cox Residence
107. Voss Residence
108. Ware Residence
109. Walsh and Assoc.
110. Woodlands Homeowners Assoc.
111. Wright Residence

*** Settling Defendants will receive CERCLA Section 122(f)(1) covenant not to sue for these sites as provided in this Consent Decree.

ATTACHMENT A
(List 4)****

Parts of sites in southwest Missouri where Northeastern Pharmaceutical and Chemical Company dioxin-contaminated waste was buried, but no further response action has been deemed necessary based on currently available information.

1. Baldwin Park, Verona, Missouri (rest of site other than the trench)
2. Neosho, Missouri (rest of site other than Campus Area which includes Spill Area, Bunker Soil/Residue, and Tank Asphaltic Material)

**** Settling Defendants will receive CERCLA Section 122(f)(1) covenant not to sue for these sites as provided in this Consent Decree.

July 18, 1990

EXPLANATION OF SIGNIFICANT DIFFERENCES

INTRODUCTION

As provided by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, the Environmental Protection Agency (EPA) is today issuing an Explanation of Significant Differences (ESD) for the final management of dioxin-contaminated soil and uncontaminated structures and debris at Times Beach, Missouri. EPA serves as the lead agency for this project, with support from the Missouri Department of Natural Resources.

CERCLA section 117(c) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 55 FR 8852 (March 8, 1990)(to be codified 40 CFR 300.435(c)(2)(i)(1990)) provide that after adoption of a final remedial action plan, if any settlement or consent decree under section 106 or section 122 is entered into, and if such action, settlement or decree differs in any significant respects from the final plan, the lead agency shall publish an explanation of the significant differences and the reasons such changes were made.

Due to information which has developed during the course of settlement discussions, EPA has determined that significant changes are necessary to components of the selected remedy, as described in the September 29, 1988 Times Beach Record of Decision (ROD). The changes to the remedy are the result of pre-design evaluations performed to assure the cost-effective implementation of the remedy and attainment of remedial action goals.

Components of the selected remedy which are impacted include the cleanup level, soil cover installation procedure, sources of material to be transported to Times Beach for thermal treatment, delisting procedure, and site definition. These changes may affect, to some degree, the overall scope, performance, or cost of the remedy, as explained below. The changes will not alter the fundamental features of the selected remedy.

This ESD will be included in the Administrative Record file. The Administrative Record is available for public review at the EPA Public Information Center located immediately east of the Times Beach site at 97 North Outer Road at Lewis Road. Additional information may be obtained by contacting the local EPA Public Information Center at (314) 938-6869, or the EPA Office of Public Affairs in Kansas City, Kansas at (913) 551-7003 (toll free 1-800-223-0425).

SUMMARY OF SITE HISTORY, CONTAMINATION PROBLEMS, AND SELECTED REMEDY

Times Beach was formerly an incorporated city located in southwest St. Louis County, approximately 20 miles southwest of the City of St. Louis. The site encompasses about 0.8 square miles, bordered on the north and east by the Meramec River, on the south by unincorporated areas of Jefferson County, and on the west by the City of Eureka. Much of the site is located in the five-year flood plain of the Meramec River.

Prior to the discovery of contamination, land use at Times Beach was predominantly residential, with minimal commercial development, and no industry. The surrounding areas have a mixture of residential and agricultural uses.

Contamination of the site occurred in the early 1970's when waste oil contaminated with dioxin (2,3,7,8-tetrachlorodibenzo-p-dioxin) was sprayed on roadways for dust control. Investigations performed at Times Beach indicate that the contamination has remained limited to surface soils along roadways. Concentrations of dioxin greater than 20 parts per billion (ppb) have been detected on approximately 15,000 feet of roadways. Recent sampling indicates that about 13,600 cubic yards of soil is contaminated at levels above 20 ppb.

In 1983, EPA transferred approximately $30 million in CERCLA (Superfund) funds to the Federal Emergency Management Agency (FEMA) for the permanent relocation of Times Beach residents and Businesses.

A Record of Decision (ROD) was issued by the United States Environmental Protection Agency (EPA) on September 29, 1988, which selected a remedy to be implemented at the Times Beach site. The selected remedy includes excavation of soils exceeding 20 ppb dioxin. These soils and previously excavated soils currently in interim storage at the Minker/Stout/Romaine Creek are to be thermally treated using a temporary thermal treatment unit located at Times Beach. Thermal treatment has been demonstrated to safely and effectively destroy dioxin contamination in soil.

The Record of Decision considered the need for management of dioxin-contaminated soils at a group of related sites in eastern Missouri. The ROD establishes that the temporary thermal treatment unit at Times Beach could be used to treat soils at these related sites. Following treatment of dioxin-contaminated soils from the related sites, the temporary thermal treatment unit will be permanently removed from Times Beach.

The selected remedy also includes placement of a one-foot soil cover over portions of the site exceeding 1 ppb, and demolition and onsite disposal of treatment residues and the

structures and debris remaining at Times Beach.

DESCRIPTION OF SIGNIFICANT DIFFERENCES

CLEAN UP LEVEL

The selected remedy for Times Beach includes the excavation and thermal treatment of contaminated soils over 20 ppb at Times Beach. The 20 ppb cleanup level was established for protection of public health and the environment for anticipated future non-residential land use. During the public comment period for the Times Beach Proposed Plan, the State of Missouri requested that EPA consider a clean up level of 10 ppb at Times Beach. This cleanup level would effectively achieve residential criteria for the site, although future residential development is not anticipated at this time.

During settlement discussions subsequent to issuance of the ROD, it was agreed that soils exceeding 5-10 ppb at Times Beach will be excavated and thermally treated, consistent with prior correspondence with CDC/ATSDR and the Missouri Department of Health indicating that the 5-10 ppb cleanup level under one foot of clean fill is equivilent to a 1 ppb cleanup level. The additional volume of soil which will be excavated and thermally treated will not add significantly to the overall cost or duration of the remedy. The selected remedy includes excavation of approximately 13,600 cubic yards (cy) at Times Beach, and thermal treatment of this soil, and an additional 14,200 cy of dioxin-contaminated soil currently in interim storage at the Minker/Stout/Romaine Creek site. The total soil volume from the designated eastern Missouri dioxin sites is estimated at approximately 100,000 cubic yards, or less. Lowering the action level at Times Beach to 5-10 ppb would add approximately 4,000 cubic yards of soil to this total volume.

SOIL INVERSION

The selected remedy for Times Beach includes placement of a one-foot soil cover over areas with dioxin levels above 1 ppb. A soil inversion procedure was proposed during settlement negotiations as a means of providing one foot or more of soil cover. The procedure currently is used for restoration of croplands in certain agricultural regions of the country.

Soil inversion is performed using a specialized piece of equipment which rotates surface soils with underlying clean soils. The equipment used for soil inversion resembles a conventional plow with staggered blades set at varying depths. The procedure results in the replacement at depth of surface soils below a clean layer of previously underlying soils.

The soil inversion technique has the demonstrated capability to achieve the ROD requirement for placement of a one-foot soil cover over surface soils. Additionally, the soil inversion procedure will eliminate drainage problems which would be created at Times Beach by conventional placement of a one-foot soil cover over contaminated roadways. Documentation supporting use of the soil inversion procedure is available in the Times Beach post-ROD Administrative Record file (55 FR 8861, to be codified at 40 CFR 300.825(a)(2)(1990)).

During settlement discussions, it was agreed that soil inversion would be performed at the Times Beach site to provide a one-foot cover over soils exceeding 1 part per billion. This procedure is anticipated to result in cost savings, while enhancing the performance of the remedy by avoiding potential future drainage problems at the site. The duration of the project will not be impacted by this procedure.

LIST OF DESIGNATED SITES

Table 1 appearing in the September 29, 1988 Record of Decision for Times Beach designated twenty-six eastern Missouri dioxin sites (including Times Beach) from which soil may be transported to the Times Beach site for thermal treatment. These twenty six sites became contaminated in the early 1970's as a result of application of similar dioxin-contaminated waste oil for dust control by the same company (Bliss Waste Oil Service), or subsequent movement of the resulting contaminated soil. The EPA will limit the use of the temporary thermal treatment unit at Times Beach to material from those eastern Missouri dioxin sites which became contaminated as a result of these activities.

Subsequent to the Record of Decision, new information became available to EPA which indicated that dioxin-contaminated waste oil may have also been sprayed on the parking area at the Hellwig Fruit Stand in Chesterfield, Missouri. Soil sampling conducted by EPA in October, 1989, confirmed the presence of dioxin in the parking area at this site. Since this site is also located in eastern Missouri and became contaminated by similar application of dioxin-contaminated waste oil for dust control by Bliss Waste Oil Service in the early 1970's, the Hellwig Fruit Stand will be in the list of sites from which contaminated materials will be considered for thermal treatment at Times Beach.

The addition of this site to those considered for treatment at Times Beach is not anticipated to significantly increase the cost or duration of the remedy. Similar to the twenty four sites designated in the Times Beach ROD (excluding Times Beach and Minker/Stout/Romaine Creek), the need for any future response action conducted at the Hellwig Fruit Stand will be based on a site-specific evaluation of contaminant levels and exposure

potential at the site, and will be discussed in a separate decision document for that site.

SITE DEFINITION

CERCLA section 104(d)(4) allows EPA to treat two or more non-contiguous facilities as one site, where the facilities are reasonably related on the basis of either geography or the threat posed to human health and the environment. For the following reasons, EPA has determined that the eastern Missouri dioxin sites designated above are related based on the threat posed, and should be treated as one site for response purposes. Accordingly, the thermal treatment of dioxin-contaminated materials from the designated locations at a single, central location is considered to be an on-site action.

The decision to consider the designated dioxin sites to be one site is based on a review of several factors, consistent with EPA policy discussed in the NCP at 55 FR 8690-91. First, contamination at each of the designated eastern Missouri sites originated from similar dioxin waste obtained from the same source, the Bliss Waste Oil Service. Contamination at each of these locations can effectively be destroyed using the same thermal treatment technology.

Second, EPA has considered the risks associated with transportation of the dioxin-contaminated materials to Times Beach for thermal treatment, and determined that the transportation of these materials to Times Beach does not represent a significant risk. The contaminated materials are relatively immobile in the environment. Any spill of contaminated materials during transport could be immediately and effectively cleaned up and removed. Health risks due to the designated dioxin-contaminated materials are related to long-term exposure, which would not occur as a result of an accidental spill during transport. Adverse health effects due to short-term exposure to these materials would not be of concern, due to the relatively low contaminant levels and brief opportunity for exposure. These low risks will be further reduced by designating haul routes which avoid population centers to the extent possible. Further, the contaminated soils, most of which are containerized in storage bags, will be hauled in plastic-lined truck beds. The plastic liner will be gathered and secured above the contaminated soils, and covered with a tarp which will be tightly fastened to the exterior bed walls.

An opportunity has been provided for the local public near each of the designated eastern Missouri sites to comment on the combined response action. Prior to issuance of the Times Beach Record of Decision, a public comment period was conducted to receive comment on the centralized thermal treatment at Times Beach of the designated eastern Missouri dioxin-contaminated

soils. Comments received during this period were carefully considered during the remedy selection process, and addressed individually in a responsiveness summary accompanying the Record of Decision. The State of Missouri is aware of, and supports, this coordinated approach.

Based on a review of all these factors, EPA has determined that a combined response action for eastern Missouri dioxin sites will be cost-effective and protective of human health and the environment. Thus, EPA has determined that it is appropriate to consider the designated eastern Missouri dioxin locations as a single site for response action purposes. This determination is consistent with considerations published in the preamble to the NCP (55 FR 8688-8691).

The consideration of the designated dioxin sites as one site under CERCLA section 104(d)(4) is significant because it affects the "procedural" requirements that will apply to Superfund actions taken at the aggregated site. On-site actions carried out under CERCLA and the NCP must meet the substantive, -- not administrative -- requirements of other laws (see discussion at 55 FR 8756-57 and 8688-90; and 55 FR 8814, definition of "applicable" requirements, to be codified at 40 CFR 300.5(1990)); instead, the NCP procedures, developed for the Superfund program, will apply.

The EPA still intends for the on-site thermal treatment unit to be operated under a RCRA/Missouri Hazardous Waste Management Law permit, although such a permit is not legally required for an on-site CERCLA action (see CERCLA section 121(e)(1)). The Agency believes that such a step is responsive to concerns voiced by the public during the remedy selection process, and will further public confidence and understanding of the remedy in this case. Specifically, during the public comment period conducted prior to issuance of the Record of Decision, the primary public concern expressed was a limitation on the duration of the project, and preventing dioxin-contaminated material from other parts of the State or country from being transported to Times Beach for thermal treatment. EPA has determined that a RCRA/Missouri Hazardous Waste Management Law permit would provide the public with assurances regarding the duration of the project and sources of materials to be thermally treated at Times Beach.

However, the aggregation of non-contiguous facilities will affect the types of procedures that will be followed for the delisting of the treatment residues, as discussed in the next section.

DELISTING

The Resource Conservation and Recovery Act (RCRA), as amended by the 1984 Hazardous Solid Waste Amendments (HSWA),

regulates the generation, transportation, treatment, storage, and disposal of hazardous wastes. As of July 15, 1986, certain dioxin wastes were added to the list of wastes which are regulated by RCRA.

Residues from the thermal treatment of dioxin wastes are specifically listed under RCRA as hazardous waste F028 (40 CFR 261.32), until "delisted". RCRA allows for the delisting of a hazardous waste when it is demonstrated that the waste "does not meet any of the criteria under which the waste was listed as a hazardous or an acutely hazardous waste" and for which there is no "reasonable basis to believe that factors (including other constituents) other than those for which the waste was listed could cause the waste to be hazardous waste" (40 CFR 260.22(a)).

The EPA Office of Solid Waste (OSW) has published procedures for preparation and evaluation of delisting petitions, which include: Petitions to Delist Hazardous Waste, EPA/530-SW-85-003, April 1985; 50 FR 4886, November 27, 1985, and 51 FR 41082, November 13, 1986. Since the disposal location for the potentially delisted waste is generally unknown when a delisting petition is reviewed by OSW, these procedures do not take into consideration site-specific conditions of the disposal site. Constituent levels that must be achieved in order for the waste to be considered non-hazardous are generically determined by the results of OSW procedures.

The residues from the Times Beach thermal treatment unit must be delisted prior to disposal at Times Beach, as provided in the ROD. Because the designated dioxin sites have been aggregated under CERCLA section 104(d)(4) and the disposal of those residues is considered to be an on-site action, the delisting of the residues is subject to the procedures of CERCLA and the NCP, rather than those that would apply under RCRA. Thus, the administrative process under RCRA for delisting a waste -- including a formal rulemaking process -- need not be met for Superfund wastes that will remain on-site. See CERCLA Compliance with Other Laws Manual, OSWER Directive 9234.2-01 (August 1988), at p. 1-11 to 1-12.

Instead, a delisting petition has been submitted and reviewed by EPA as part of the CERCLA process, with consideration of programmatic guidance issued by EPA's Office of Solid Waste as well as the Superfund program; that petition has been placed in the administrative record file for public review. Appropriate delisting levels heve been established and approved by the EPA Regional Administrator following review of the petition. Since the characteristics and disposal location is known for the on-site Superfund wastes, EPA has taken site-specific conditions into account for the determination of acceptable delisting criteria for these materials. Of course, as with any on-site CERCLA action, the delisting and subsequent disposal of the

residues must meet (or justify a waiver for) all substantive requirements of RCRA and other federal or state environmental laws that are applicable or relevant and appropriate (CERCLA section 121(d)(2)(A)). Final delistable levels will be announced in a fact sheet.

SUPPORT AGENCY COMMENTS

A draft Explanation of Significant Differences was transmitted to the Missouri Department of Natural Resources on March 21, 1990. Comments were received by EPA on July 17, 1990.

The State strongly supports reducing the cleanup level at Times Beach to 10 ppb covered with one foot of soil and inversion of areas with dioxin levels of 1 ppb or greater. The State commented that no surface contamination will remain at the site, and that future operation and maintenance costs would be minimized. The State further commented that since the revised level is equivilent to a residential cleanup, unrestricted access to Times Beach can be allowed, enabling future beneficial use of the site.

AFFIRMATION OF THE STATUTORY DETERMINATION

Considering the new information that has been developed and the changes that have been made to the selected remedy, the lead and support agencies believe that the remedy remains protective of human health and the environment, complies with federal and state requirements that are applicable or relevant and appropriate to this remedial action, and is cost-effective. The remedy also "utilizes permanent solutions and...treatment...to the maximum extent practicable," and satisfies the statutory preference for remedies that employ treatment that reduces toxicity, mobility, or volume, as a principal element.

PUBLIC PARTICIPATION ACTIVITIES

The Administrative Record is available for public review and comment at the EPA Public Information Center located immediately east of the Times Beach site. EPA is not at this time reconsidering selection of the remedy at the Site. The lead agency is required to consider comments submitted by interested persons after the close of the public comment period only to the extent that the comments contain significant information not contained elsewhere in the administrative record file which could not have been submitted during the public comment period and which substantially support the need to significantly alter the response action. Comments received by EPA which are responsive to this ESD will be included in the Administrative Record file.

Further, EPA will review the documents received in conjunction with the lodging of the consent decree implementing the remedy selected by EPA (as explained in this ESD).

ATTACHMENT D

With reference to the former City of Times Beach, the State of Missouri agrees to establish and enforce land use restrictions concerning areas which have been tested and shown to have dioxin contamination in excess of 1 part per billion. These land restrictions shall be as follows:

1. No such land or interest in such land may be sold or otherwise conveyed by the State until the EPA, ATSDR and the MDH determine that the land is safe for the use intended. Any conveyance shall be accompanied by enforceable provisions to restrict the use of such land to such intended use.

2. If it is determined that such land is safe for use by humans and if the land is still classified as a floodplain by FEMA, no use may be made of the land which is not fully consistent with FEMA's criteria (which are hereby incorporated by reference as part of this Attachment) for open space uses of floodplains.

3. No use may be made of such land except such actions which, in the judgment of the EPA, ATSDR, Interior and MDNR are in furtherance of, or maintenance of, remedial actions taken by the United States, including Interior, FEMA, and EPA, or the Settling Defendants. Provided, however, if the MDH, CDC and EPA determine that such land is safe for use by humans, the land may be used only for those uses deemed safe.

4. No use may be made of such land which is inconsistent with the remedy described in the Record of Decision for Times Beach (including but not limited to maintaining the

level of protection afforded by the specified soil cover, to the extent required by the Record of Decision), and reflected in Work Plans developed in connection with this Decree.

PRIVILEGED AND CONFIDENTIAL

OPERATION AND MAINTENANCE PLAN
TIMES BEACH

Remediated Areas

The U.S. Environmental Protection Agency (EPA), Region VII, has advised the state that if residual dioxin levels of five to ten parts per billion are left beneath a foot of clean soil, surface concentrations will not exceed a level of health concern for residential areas following most conceivable types of soil disturbance or excavation. It is the position of EPA, Region VII, personnel that a cleanup level of five to ten parts per billion covered by one foot of clean soil is protective of human health in residential areas and eliminates future monitoring or surveillance requirements. Therefore, the state does not intend to institute an elaborate program of operation and maintenance at Times Beach. Annual or semiannual inspections of the remediated areas may be made for the purpose of verifying that use of the land remains consistent with the intended site usage. Maintenance of disturbed or eroding areas may be performed if the state determines that it is necessary, given the use of the site at the time. For example, if a park is established, these areas would be maintained as a part of overall park maintenance. Mowing will be performed as necessary given the site usage.

No future sampling and analysis is envisioned unless surveillance identifies a need. Access restrictions in the form of posting or fencing will not be imposed.

Landfill Cells

The landfill cells will be inspected quarterly. Groundwater samples will be taken and analyzed for those parameters required by the Missouri Solid Waste Regulations. A check will be made for leachate. If leachate is found, samples will be taken and analyzed. The leachate will then be disposed of in accordance with state requirements. On an annual basis, groundwater samples will be taken and analyzed for a more complete set of parameters as required by Missouri Solid Waste Regulations. Monitoring for methane generation will also be performed.

The integrity of the cover over the landfill cells will be checked. Breaches in the cover will be repaired and reseeded. If significant subsidence occurs, this will be repaired. In addition, the cells will be mowed periodically to discourage the growth of any woody vegetation.

A site inspection will be performed immediately following any flood event which inundates the cells.

ATTACHMENT E

Certification of Completion

I hereby certify, pursuant to Paragraph 75 of the Consent Decree in Civil Action Nos. 84-200C(1) and 89-351C(1)-89-371C(1), 90-656C(1), 83-2670C(2), 84-1447C(4), and 85-2856C(6) (Decree), with respect to the notice of completion submitted on _____, as to the _____ Site (Site), as follows:

1. The Work and Remedial Action at the Site have been satisfactorily completed in accordance with the requirements of the applicable Work Plans;

2. All payments currently due from Settling Defendants pursuant to this Decree have been paid; and

3. The materials (i.e., those materials whose hazardous constituents are treated so as to be destroyed, eliminated or permanently immobilized under the Work Plans) found at or removed from the Site have been destroyed, eliminated, or permanently immobilized such that in my judgment (i.e., a judgment reflected in the Work Plans previously approved by EPA and the State and now based solely upon satisfaction of such Work Plans): they no longer present any current or currently foreseeable future significant risk to public health, welfare, or the environment; no byproduct of the treatment or destruction process presents any significant hazard to public health, welfare, or the environment; and all byproducts are themselves treated, destroyed, or contained in a manner which assures that

such by-products do not present any current or currently foreseeable future significant risk to public health, welfare, or the environment.

Pursuant to Paragraphs 76 and 77 of the Decree, this Certification is deemed to constitute a Special Covenant Not to Sue to the fullest extent permissible under Section 122(f)(2)(B). This Special Covenant shall extend to: (a) all materials (i.e., those materials whose hazardous constituents are treated so as to be destroyed, eliminated or permanently immobilized under the Work Plans) found at or removed from the Site which have been treated so as to satisfy the requirements of Paragraph 76; and (b) any portion of the Site (i.e., that portion which consists of delisted ash and/or soil placed on the Site which remains uncontaminated with dioxin) with respect to which the materials (i.e., those materials whose hazardous constituents are treated so as to be destroyed, eliminated or permanently immobilized under the Work Plans) have been treated so as to satisfy the requirements of Paragraph 76. At any Site where a Special Covenant Not to Sue under (a) or (b) above has been granted, and this Court, contrary to the position of the United States and in accordance with the position of the Settling Defendants as set forth in the document which accompanies and lodges the Decree, concludes as a matter of law that a Special Covenant Not to Sue under Section 122(f)(2)(B) of CERCLA extends to any additional portion or portions of the Site which have not received a Special Covenant Not to Sue under (a) or (b) above, then, without any further governmental approval or certification being necessary or

required for the Site, Syntex shall receive a Special Covenant Not to Sue under Section 122(f)(2)(B) of CERCLA for that portion or portions.

Unless otherwise specified, all terms herein shall have the same definitions as in the Decree.