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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

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| Crane Co., et al., | ) | |
| Plaintiff(s), | ) | CIV-03-2226-PHX-ROS<br>CIV-04-1400-PHX-ROS<br>(Consolidated) |
| v. | ) | |
| United States of America, | ) | PARTIAL CONSENT DECREE |
| Defendant(s). | ) | |

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## I. BACKGROUND

A. On July 8, 2004, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607. By Order of the Court, the United States' complaint was consolidated with a complaint filed by Settling Defendants Crane Co. and Unidynamics/Phoenix, Inc. against the United States and related parties with respect to the Site under the consolidated caption, *Crane Co. et al. v. United States et al.*, CIV 03-2226-PHX-ROS, CIV 04-1400-PHX-ROS (Consolidated).

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred and to be incurred by EPA and the Department of Justice for response actions at the Phoenix-Goodyear Airport (North) Superfund Site ("PGA-North Site") in Goodyear, Arizona, together with accrued interest; (2) performance of studies and response work by the Settling Defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"); (3) compliance by Settling Defendant Unidynamics/Phoenix, Inc. with the terms of two unilateral administrative orders issued by EPA directing Unidynamics/Phoenix, Inc. to perform remedial design and remedial action at the Site; and (4) civil penalties pursuant to Section 106(b)(1) of CERCLA and punitive damages pursuant to Section 107(c)(3) of CERCLA for Settling Defendant Unidynamics/Phoenix, Inc.'s failure to comply with the terms of the unilateral administrative orders.

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

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), prior to entering into this Consent Decree, EPA notified the National Oceanic and Atmospheric

Administration and the Department of the Interior of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

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

F. On September 8, 1983, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA added the PGA-North Site, plus additional parcels located nearby, to the National Priorities List set forth at 40 C.F.R. Part 300, Appendix B, as the Litchfield Airport Area Superfund Site.

G. From 1984 to 1989, pursuant to administrative orders by and agreements with EPA, Settling Defendant Unidynamics/Phoenix, Inc. performed a remedial investigation and feasibility study ("RI/FS") for the PGA-North Site. Unidynamics/Phoenix, Inc. submitted a draft RI/FS Report to EPA in May 1989. On June 7, 1989, EPA issued the final RI/FS Report.

H. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, on June 7, 1989, EPA published notice of the completion of the FS and of the proposed plan for remedial action. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action.

I. On September 26, 1989, EPA issued a Record of Decision ("ROD") specifying the remedial actions selected to address releases of hazardous substances at the Site. The ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

J. Subsequent to issuance of the ROD, pursuant to 40 C.F.R. § 300.435(c)(2)(i), EPA has issued five Explanations of Significant Differences ("ESDs"), in January 1991, May 1993, December 1995, March 1998, and November 2003, reflecting changes to the remedy for

Site.

K. On September 10, 1990, under the authority vested in the President of the United States by Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), EPA issued a unilateral administrative order, followed on October 10, 1990 by an amended unilateral administrative order (the "1990 Order"), to Settling Defendant Unidynamics/Phoenix, Inc. requiring performance of remedial design and remedial action for the groundwater and soil vadose zone remedies selected in the ROD for the PGA-North Site.

L. On January 2, 2003, EPA issued a second unilateral administrative order (the "2003 Order") under the authority vested in the President of the United States by Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), to Settling Defendant Unidynamics/Phoenix, Inc. requiring development of an SVE Redesign Work Plan, collection of data to establish the current distribution of contamination to inform appropriate redesign of the SVE system, and performance of start-up and operation and maintenance of the SVE system consistent with the ROD and the November 2003 ESD.

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

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

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

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

## II. JURISDICTION

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

## III. PARTIES BOUND

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

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

## IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the

meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the SOW attached hereto and incorporated hereunder, the following definitions shall apply:

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

"Complaint" shall mean the Complaint filed by the United States against Unidynamics/Phoenix, Inc. and Crane Co. on July 8, 2004, in the United States District Court for the District of Arizona, captioned *United States v. Unidynamics/Phoenix, Inc. et al.*, No. CV-04-1400-PHX-JAT (D. Ariz.).

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

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

"Effective Date" shall be the effective date of this Consent Decree as provided in Paragraph 129.

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

"ESDs" shall mean the Explanations of Significant Differences relating to the Phoenix-Goodyear Airport Superfund Site issued by EPA in January 1991, May 1993, December 1995, March 1998, and November 2003, and all attachments thereto. The 1993 and 2003 ESDs are attached to this Consent Decree as Appendix B.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports, and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs,

contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XV, and Paragraph 108 of Section XXII. Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs Settling Defendants have agreed to reimburse under this Consent Decree that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from December 31, 2004 to the Effective Date.

"Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between October 1, 2004 and the Effective Date, or (b) incurred by the United States prior to the Effective Date but paid after that date.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of Interest shall be the rate in effect at the time the Interest accrues. The rate of Interest is subject to change on October 1 of each year.

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

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

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

"Parcels B and C" shall mean those parts of the Site that are described in Appendix H.

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

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through September 30,

2004, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through December 31, 2004.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, as set forth in the ROD, the ESDs, and the SOW, and as established following investigation conducted pursuant to the SOW.

"Plaintiff" shall mean the United States.

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

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Phoenix-Goodyear Airport Superfund Site signed on September 26, 1989, by the Regional Administrator, EPA Region IX, or his/her delegate, and all attachments thereto. The ROD is attached to this Consent Decree as Appendix A.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendants to implement the ROD and the ESDs, and any other response actions selected by EPA in the future, in accordance with the SOW and any other plans approved by EPA.

"Remedial Design" shall mean those activities to be undertaken by the Settling Defendants to develop the final plans and specifications for the Remedial Action pursuant to the SOW and other plans approved by EPA.

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

"Settling Defendants" shall mean Unidynamics/Phoenix, Inc. ("UPI") and Crane Co.

"Settling Defendants' Related Persons" shall mean former or current officers, directors, or employees of Settling Defendants.

"Site" shall mean, for purposes of this Consent Decree, the northern portion of the Phoenix-Goodyear Airport Superfund Site, also known as the Phoenix-Goodyear Airport (North) Superfund Site, located in Goodyear, Maricopa County, Arizona, including the area of contamination within the Unidynamics Property and the contaminant plumes, and all areas where hazardous substances disposed of at the northern portion of the Phoenix-Goodyear Airport

Superfund Site have come to be located.

"State" shall mean the State of Arizona.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the pre-remedial investigation, Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix C to this Consent Decree, and any modifications thereto made in accordance with this Consent Decree.

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

"Unidynamics Property" shall mean the property currently owned by Unidynamics/Phoenix, Inc. located at 102 South Litchfield Road, Goodyear, Maricopa County, Arizona, and the additional property previously owned by Unidynamics/Phoenix, Inc. during active manufacturing operations, which collective Property is bounded by Van Buren Road to the north, the Union Pacific Railway to the west, and Litchfield Road to the east. The Unidynamics Property is depicted generally on the map attached to this Consent Decree as Appendix D.

"Unilateral Administrative Orders" or "UAOs" shall mean the EPA Amended Unilateral Administrative Order, EPA Docket No. 90-20, issued to Unidynamics/Phoenix, Inc. on October 10, 1990, and the EPA Unilateral Administrative Order, EPA Docket No. 9-2003-01, issued to Unidynamics/Phoenix, Inc. on January 2, 2003.

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

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous material" under Ariz. Rev. Stat. 28-5201.

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

## V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the

design and implementation of response actions at the Site by the Settling Defendants, to reimburse response costs of the Plaintiff, and to resolve the claims of Plaintiff against Settling Defendants as provided in this Consent Decree.

6. Commitments by Settling Defendants.

a. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, the ESDs, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendants and approved by EPA pursuant to this Consent Decree. Settling Defendants shall also reimburse the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree.

b. Settling Defendant UPI shall pay a civil penalty to the United States and perform a supplement environmental project to resolve the United States' allegations in the Complaint that UPI failed to comply with the requirements of the UAOs regarding performance of remedial action at the Site. Settling Defendant UPI shall comply with the UAOs, and shall perform all work required under the UAOs in accordance with the terms of the UAOs, until such time as the UAOs are superseded by this Consent Decree pursuant to Paragraph 121.

c. The obligations of Settling Defendants to finance and perform the Work and to reimburse the United States for Past Response Costs and Future Response Costs under this Consent Decree are joint and several.

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

8. Permits.

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the

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

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

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

9. Notice to Successors-in-Title.

a. With respect to any property owned or controlled by any Settling Defendant that is located within the Site, within 15 days after the Effective Date, the Settling Defendant shall submit to EPA for review and approval a notice to be filed with the Recorder's Office, Maricopa County, State of Arizona, which shall provide notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Site on September 26, 1989, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. Such notice(s) shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Settling Defendant(s) shall record the notice(s) within 10 days of EPA's approval of the notice(s). The Settling Defendant(s) shall provide EPA with a certified copy of the recorded notice(s) within 10 days of recording such notice(s).

b. At least 30 days prior to the conveyance of any interest in property located within the Site including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Settling Defendant(s) conveying the interest shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements")

pursuant to Section IX (Access and Institutional Controls), and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section IX (Access and Institutional Controls). At least 30 days prior to such conveyance, the Settling Defendant(s) conveying the interest shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.

c. In the event of any such conveyance, the Settling Defendant's obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls, pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the Settling Defendant(s). In no event shall the conveyance release or otherwise affect the liability of the Settling Defendant(s) to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States so approves in writing, the grantee may perform some or all of the Work under this Consent Decree.

## VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Work by Settling Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA, after a reasonable opportunity for review and comment by the State. Within 10 days after the lodging of this Consent Decree, Settling Defendants shall notify EPA and the State in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Settling Defendants shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994,

"Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP shall be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA and the State and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the State, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA and the State a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendants may select any contractor from that list that is not disapproved and shall notify EPA and the State of the name of the contractor selected within 21 days of EPA's authorization to proceed.

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

11. Work to Be Performed. The Settling Defendants shall implement and complete the Work obligations set forth in the Statement of Work. All Work shall be performed in accordance with the NCP and all amendments thereto that are effective and applicable to any activity undertaken pursuant to this Consent Decree, and also in accordance with the Performance Standards, specifications, workplans, deliverables, and schedules of completion set forth in, or approved by EPA pursuant to, this Consent Decree and the Statement of Work. All

Work shall be performed by qualified employees or contractors.

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

13. Petitions by Settling Defendants for Potential Modification or Fundamental Change to Selected Remedial Actions.

If Settling Defendants believe that information collected during the investigations conducted pursuant to the Consent Decree and the attached SOW supports a modification to the implementation of, or a fundamental change to, the remedy selected in the ROD, Settling Defendants may petition EPA to consider specific modifications or changes to the selected remedy. Any proposed modifications or fundamental changes to the selected remedy shall be submitted to EPA as an addendum to the relevant investigation report for the particular media as set forth under Tasks 2.7, 5.7, 8.4, 9.3, or 10.11 of the SOW, and such petition shall include all information and analyses supporting the proposed modifications. Settling Defendants' petition shall not be deemed complete until all such information and analyses are submitted to EPA. EPA, in its sole discretion, will either accept or deny Settling Defendants' petition based on a review of the information submitted in the relevant Report and other relevant information. Settling Defendants shall not have the right to challenge or to seek judicial review of, either through the Dispute Resolution provisions of the Consent Decree or otherwise, EPA's determination with respect to Settling Defendants' petition(s). Submission by Settling Defendants of a petition for modification or alteration of the remedy shall not relieve Settling Defendants of their obligations under this Consent Decree and the attached SOW to perform all required activities consistent with the existing remedy, unless EPA provides written direction to discontinue such activities. If EPA accepts Settling Defendants' petition, EPA and Settling Defendants will proceed in accordance with Paragraph 14 or Paragraphs 18-21, as applicable. If EPA denies the petition, EPA will provide written notice of, and a statement of the reasons for, the denial to Settling Defendants.

14. Modification of the SOW or Related Work Plans.

a. If EPA makes a written determination, based on a petition by Settling Defendants pursuant to Paragraph 13 above or EPA's evaluation of other information, that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD and the ESDs, EPA may require that such modification be incorporated into the SOW and/or such work plans, provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD and ESDs.

b. For the purposes of this Paragraph 14 and Paragraph 51 only, the "scope of the remedy selected in the ROD and the ESDs" is: the characterization and removal of contaminants from groundwater and from soil and vadose zones using the treatment methods and technologies identified in the ROD and the ESDs as the preferred alternatives for the Site.

c. If Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XX (Dispute Resolution), Paragraph 88 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

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

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

15. Settling Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, or any other work plans or deliverables constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW and the work plans will achieve the Performance Standards.

16. a. Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project

Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

(1) The Settling Defendants shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

(2) The identity of the receiving facility and state will be determined by the Settling Defendants following the award of the contract for Remedial Action construction. The Settling Defendants shall provide the information required by Paragraph 16.a(1) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Settling Defendants shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440. Settling Defendants shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.

## VII. REMEDY REVIEW

17. Periodic Review. Settling Defendants shall conduct any studies and investigations as requested by EPA in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

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

NCP.

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

20. Settling Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site pursuant to Paragraph 18, the Settling Defendants shall undertake such further response actions as EPA determines are necessary. Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute (1) EPA's determination that the Remedial Action is not protective of human health and the environment, or (2) EPA's selection of the further response actions. Disputes pertaining to the whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 88 (record review).

21. Submissions of Plans. If Settling Defendants are required to perform further response actions pursuant to Paragraph 20, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendants) and the SOW, including, as applicable, SOW Tasks 12.0, 13.0, and 14.0, and shall implement the plan approved by EPA in accordance with the provisions of this Consent Decree and the SOW.

## VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

22. a. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any

monitoring project under this Consent Decree, Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP, and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Consent Decree. Settling Defendants shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the *Contract Lab Program Statement of Work for Inorganic Analysis*, ILM05.3 (February 2004), *Contract Lab Program Statement of Work for Organic Analysis*, OLMO4.3 (August 2003), and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, after opportunity for review and comment by the State, the Settling Defendants may use other analytical methods which are as stringent as or more stringent than the CLP- approved methods. Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Defendants shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001), or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Settling Defendants shall ensure that all field methodologies utilized in

collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

23. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA or their authorized representatives. Settling Defendants shall notify EPA not less than 28 days in advance of any sample collection activity unless otherwise set forth in the SOW or unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Settling Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Settling Defendants' implementation of the Work and, upon request, shall make available to Settling Defendants a copy of any validated results of analyses made of such samples and the associated validation package. Nothing in this Paragraph shall require EPA to complete the validation process for any particular analytical results.

24. Settling Defendants shall submit to EPA three (3) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

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

## IX. ACCESS AND INSTITUTIONAL CONTROLS

26. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by the Settling Defendants, the Settling Defendants shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States and its representatives, including EPA and its contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

(1) Monitoring the Work;

(2) Verifying any data or information submitted to the United States;

(3) Conducting investigations relating to contamination at or near the Site;

(4) Obtaining samples;

(5) Assessing the need for, planning, or implementing additional response actions at or near the Site;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 108 of this Consent Decree;

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

(9) Assessing Settling Defendants' compliance with this Consent Decree; and

(10) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree.

The United States will make a reasonable effort to provide at least 24-hours advance notice to Settling Defendants of its need to obtain access; provided, however, that failure to provide such notice shall not be asserted by Settling Defendants as a basis for delaying or denying access.

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, monitoring, or protectiveness of the remedial measures to be performed pursuant to the ROD and the ESDs or any future response actions required by EPA. Such use restrictions include, but are not limited to, the following:

(1) For all portions of the Site other than Parcels B and C:

(a) Require disclosure of all land/water use restrictions to all occupants of the property.

(b) Inform EPA of the identities of all occupants of the property and all changes in occupancy.

(c) Prohibit use or redevelopment of the Property for residential use, use as a hospital, school for people aged 21 and under, or day care center, or other uses likely to result in extended exposure to sensitive receptors.

(d) Allow the placement of Site access controls, such as warning signs or other posted information, gates or fencing, and prohibit removal of, damage to, interference with or circumvention of such controls.

(e) Prohibit setting, removal, interference with or alterations to the grading, irrigation controls, vegetation, and surface water and drainage controls without EPA approval.

(f) Prohibit soils excavation and removal or improvement of areas of asphalt or concrete pavement without EPA approval.

(g) Require maintenance of existing and future foundations, and prohibit the making of new openings in building floor slabs (except as authorized by EPA), in areas underlain by impacted soils or Waste Materials and in soil gas noncompliance areas. Require reporting to EPA of all cracks or damage in such foundations and require repair of such cracks or damage in an expedited manner.

(h) Prohibit circumvention of indoor air handling and controls.

(i) Obtain prior written approval from EPA for all building or site modifications on the Property.

(j) Prohibit making of boreholes, foundation piles, or other subsurface penetrations that could create conduits allowing Waste Materials to migrate to groundwater.

(k) Prohibit use of septic tanks on the Property and require that such tanks be decommissioned in accordance with local regulations.

(l) Prohibit use of the Property in any manner that may interfere with or affect the investigation of contamination or the testing of treatment alternatives.

(m) Prohibit installation, closure, damage, blocking, or otherwise obstructing monitoring points, including but not limited to groundwater monitoring wells, soil gas probes, reservoir leachate collection wells, lysimeters, soil gas vents, and survey monuments, except as authorized by EPA.

(n) Require proper labeling of groundwater monitoring wells, soil gas probes, reservoir leachate collection wells, lysimeters, soil gas vents, and survey monuments.

(o) Prohibit opening of and placement of objects into monitor wells (except during routine monitoring and sampling conducted in accordance with an approved plan).

(p) Prohibit use of the Property in any manner that may interfere with or affect the integrity of the remedy or any of its components as constructed pursuant to the ROD and the ESDs.

(q) Prohibit shutting down or interfering with indoor air contamination sensors or alarms, soil gas control modification systems, liquids recovery systems, liquids treatment systems, and treated liquids storage facilities (except for routine maintenance conducted in accordance with an approved plan).

(r) Require prior written approval from EPA before any new excavation, grading, construction, or demolition may occur on the Property and compliance with the following requirements to ensure that there is no off-site migration of harmful levels of dust, odors, or organic vapors, and to protect the health and welfare of on-site personnel and workers:

i. New construction shall be supported by appropriate subsurface explorations and analytical laboratory data to characterize the construction area for the possible existence of impacted soils and Waste Materials.

ii. Demolition work shall be supported by characterization of building contents and subsurface exploration and analytical data near the

building to characterize the demolition area for the possible existence of above-grade or below-grade Waste Materials.

iii. If impacted soils or Waste Materials are discovered in the construction or demolition area, they shall be remediated or new buildings and structures shall be appropriately designed to protect occupants.

iv. Prior to approval of any construction or demolition, appropriate worker and public health and safety precautions, including but not limited to personal protective equipment, dust control, safety plans, spill prevention and contingency plans, and other forms of worker protection, must be taken.

(2) For Parcels B and C:

(a) Require disclosure of all land use and water use restrictions to all occupants of the Property.

(b) Inform EPA of all changes in occupancy and the identity and business activity of any new occupants.

(c) Prohibit use or redevelopment of the Property for residential use, use as a hospital, school for people aged 18 and under, or day care center, or other uses likely to result in extended exposure to sensitive receptors.

(d) Prohibit installation of groundwater supply wells on the Property.

(e) Prohibit use of septic tanks on the Property and require that such tanks be decommissioned in accordance with local regulations.

(f) Prohibit use of the Property in any manner that may interfere with or adversely affect the investigation of contamination, the testing of treatment alternatives, or the integrity of the remedy or any of its components, as constructed pursuant to the ROD and the ESDs.

(g) Prohibit installation, closure, damage, blocking, or otherwise obstructing monitoring points, including but not limited to groundwater supply wells, monitoring wells, soil gas probes, reservoir leachate collection

wells, lysimeters, soil gas vents, and survey monuments, except as authorized by EPA.

(h) Prohibit shutting down or interfering with indoor air contamination sensors or alarms, soil gas control modification systems, liquids recovery systems, liquids treatment systems, and treated liquids storage facilities, except as provided for routine maintenance conducted in accordance with an approved plan; provided, however, that this prohibition does not apply to sensors or related equipment in buildings that are being demolished.

(i) Require notification to EPA before any new excavation or other subsurface penetration, including the making of boreholes or foundation piles, at a depth of greater than six (6) feet may occur on the Property and compliance with the following requirements to protect the health and welfare of on-site personnel and workers:

i. New excavation or subsurface penetration at a depth greater than six (6) feet shall be supported by appropriate subsurface explorations and analytical laboratory data to characterize the construction area for the possible existence of impacted soils and Waste Materials.

ii. If impacted soils or Waste Materials are discovered in the construction area, they shall be remediated or new buildings and structures shall be appropriately designed to protect occupants.

(3) Settling Defendants shall ensure compliance by all users of the relevant property with the above restrictions, except as otherwise authorized by EPA to implement the remedy selected in the ROD and the ESDs or any future response action required by EPA.

c. if EPA so requests, execute and record in the Recorder's Office of Maricopa County, State of Arizona, an easement/environmental restriction ("Easement"), running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in

Paragraph 26.a of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 26.b(1) or (2), as applicable, of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to (i) the United States, on behalf of EPA, and its representatives, and/or (ii) the State and its representatives, and/or (iii) such other appropriate grantee(s) as determined by EPA. Settling Defendants shall, within 45 days of EPA's written request, submit to EPA for review and approval with respect to such property:

(1) a draft Easement, in substantially the form attached to this Consent Decree as Appendix E or in such other form that is acceptable to EPA, that is enforceable under the laws of the State of Arizona, and

(2) a current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the Easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

Within 15 days of EPA's approval and acceptance of the Easement and the title evidence, Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the Easement with the Recorder's Office of Maricopa County. Within 30 days of recording the Easement, Settling Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Easement showing the clerk's recording stamps. If the Easement is to be conveyed to the United States, the Easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

27. If the Site, or any other property where access and/or land/water use restrictions

are needed to implement this Consent Decree, is owned or controlled by persons other than the Settling Defendants, Settling Defendants shall use best efforts to secure from such persons:

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

b. an agreement, enforceable by the Settling Defendants and the United States, to refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, monitoring, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such agreement should include, at a minimum, the restrictions identified in Paragraph 26.b(1) or (2), as applicable, of this Consent Decree.

c. if EPA so requests, the execution and recordation in the Recorder's Office of Maricopa County, State of Arizona, of an easement/environmental restriction ("Easement"), running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26.a of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 26.b(1) or (2), as applicable, of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to (i) the United States, on behalf of EPA, and its representatives, and/or (ii) the State and its representatives, and/or (iii) such other appropriate grantee(s) as determined by EPA. Within 45 days of EPA's written request, Settling Defendants shall submit to EPA for review and approval with respect to such property:

(1) a draft Easement, in substantially the form attached to this Consent Decree as Appendix E or in such other form that is acceptable to EPA, that is enforceable under the laws of the State of Arizona, and

(2) a current title insurance commitment, or some other evidence of title acceptable to EPA, which shows title to the land described in the Easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances)

Within 15 days of EPA's approval and acceptance of the Easement and the title evidence, Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, the Easement shall be recorded with the Recorder's Office of Maricopa County. Within 30 days of the recording of the Easement, Settling Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Easement showing the clerk's recording stamps. If the Easement is to be conveyed to the United States, the Easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

28. For purposes of Paragraphs 26 and 27 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien or encumbrance. If (a) any access or land/water use restriction agreements required by Paragraphs 27.a or 27.b of this Consent Decree are not obtained within 45 days of the Effective Date, (b) any access easements or restrictive easements required by Paragraph 27.c of this Consent Decree are not submitted to EPA in draft form within 45 days of EPA's written request, or (c) Settling Defendants are unable to obtain an agreement pursuant to Paragraph 26.c.(1) or Paragraph 27.c.(1) from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the Easement being created pursuant to this Consent Decree within 45 days of EPA's written request, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 26 or 27 of this Consent Decree. The United

States may, as it deems appropriate, assist Settling Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Payments for Response Costs and Civil Penalty), for all costs incurred, direct or indirect, by the United States in obtaining such access, land/water use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

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

30. With respect to the Site, any portion of the Site, or any other property that is subject to a use restriction or an Easement imposed solely pursuant to this Section IX (and not independently required by or incorporated in any ROD, amended ROD, or ESD for the Site), Settling Defendants or any other owner of the Site may request in writing that EPA rescind the use restriction or abandon or modify the Easement. Any such request shall include an explanation of why maintenance of the use restriction or Easement is (1) no longer necessary to prevent interference with the implementation, integrity, monitoring, or protectiveness of the remedial measures required by the ROD and the ESDs or any future response actions required by EPA, and (2) no longer necessary to protect human health or the environment, and all information supporting this explanation. EPA, in its sole discretion, will either accept or deny the request based on a review of the information submitted and other relevant information. The requesting party shall not have the right to challenge or to seek judicial review of, either through the Dispute Resolution provisions of the Consent Decree or otherwise, EPA's determination with respect to the request. If EPA accepts the request, EPA shall provide written authorization to implement the rescission, modification, or abandonment and shall provide such additional

assistance as is necessary. If EPA denies a request to rescind a use restriction or abandon an Easement, EPA shall provide a written statement of reasons for the denial.

31. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

## X. REPORTING REQUIREMENTS

32. a. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA and the State three (3) copies of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans, and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts, and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks; and (h) describe Settling Defendants' progress in satisfying their obligations in connection with the supplemental environmental project ("SEP") under Section XVII (Supplemental Environmental Project) of this Consent Decree, including, at a minimum, a narrative description of activities undertaken and compliance with the schedules or milestones set forth in Appendix F to this Consent Decree. Settling Defendants shall submit these progress reports to EPA and the State by

the tenth day of every month following the lodging of this Consent Decree until EPA provides notice to the Settling Defendants pursuant to Paragraph 51.b of Section XIV (Certification of Completion) or until EPA notifies Settling Defendants in writing that less frequent reporting is required. If requested by EPA, Settling Defendants shall also provide briefings for EPA to discuss the progress of the Work.

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

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

35. Within 7 days of the onset of such an event, Settling Defendants shall furnish to Plaintiff a written report, signed by the Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

36. Settling Defendants shall submit three (3) copies of all plans, reports, and data required by the SOW or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendants shall simultaneously submit three (3) copies of all such plans, reports, and data to the State. Upon request by EPA, Settling Defendants shall submit in electronic form all portions of any report or other deliverable Settling Defendants are required to

submit pursuant to the provisions of this Consent Decree.

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

## XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

38. After review of any plan, report, or other item which is required to be submitted for approval pursuant to this Consent Decree and/or the SOW, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendants at least one notice of deficiency and an opportunity to cure within 30 days, except where EPA determines that to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

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

40. Resubmission of Plans

a. Upon receipt of a notice of disapproval pursuant to Paragraph 38(d), Settling Defendants shall, within 30 days or such longer time as specified in the SOW or by EPA

in the notice of disapproval, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXI, shall accrue during the correction period or otherwise-specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 41 and 42.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 38(d), Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

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

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

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

to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

## XII. PROJECT COORDINATORS

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

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

46. EPA's Project Coordinator and the Settling Defendants' Project Coordinator will meet or confer, at a minimum, on a monthly basis.

## XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

47. Within 30 days of the Effective Date, Settling Defendants shall establish and maintain financial security in the amount of $35 million in one or more of the following forms:

a. A surety bond guaranteeing performance of the Work;

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

c. A trust fund;

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

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

f. A demonstration that one or more Settling Defendants satisfy the financial covenant and reporting requirements set forth in Appendix G to this Consent Decree.

48. a. If the Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 47.d of this Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 47.d or 47.e, they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendants shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurances listed in Paragraph 47 of this Consent Decree. Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

b. The commencement of any Work Takeover pursuant to Paragraph 108 of this Consent Decree shall trigger EPA's right to receive the benefit of any financial security

mechanism(s) provided pursuant to Paragraph 47.a, b, c, or d, and at such time EPA shall have immediate access to resources guaranteed under any such financial security mechanism(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. If for any reason EPA is unable to promptly secure the resources guaranteed under any such financial security mechanism(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or in the event that the financial security mechanism involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 47.e or 47.f, Settling Defendant(s) shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA, which amount will be used to fund the costs of such remaining Work.

c. Should EPA exercise the rights set forth in Paragraph 48.b and draw funds from a financial assurance mechanism provided by Settling Defendants, EPA shall include a statement with any bill for Future Response Costs issued after it makes any such draw providing a summary description of how funds drawn from the financial assurance mechanism(s) were expended by EPA. If Settling Defendants obtain a final decision through the Dispute Resolution process that expenditure(s) made by EPA with funds drawn from Settling Defendants' financial assurance mechanisms(s) was improper under CERCLA or this Consent Decree and Settling Defendants should not be responsible for such expenditures(s), Settling Defendants shall receive a credit against Future Response Costs in an amount equal to the expenditure(s) held to be improper, provided, however, that the credit shall not exceed the total amount of Future Response Costs billed or due following the conclusion of the Dispute Resolution process.

49. If Settling Defendants can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 47 above after the Effective Date, Settling Defendants may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Settling Defendants shall submit a

proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Settling Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

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

## XIV. CERTIFICATION OF COMPLETION

51. Completion of the Work.

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

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

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Work,

provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD and the ESDs," as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

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

## XV. EMERGENCY RESPONSE

52. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 53, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. The Settling Defendants shall also immediately notify the EPA Region IX Regional Response Center. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs and Civil Penalty).

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

## XVI. PAYMENTS FOR RESPONSE COSTS AND CIVIL PENALTY

54. Payments for Past Response Costs.

a. Within 30 days of the Effective Date, Settling Defendants shall pay to EPA $6,700,000 in payment for Past Response Costs. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2004V00596, EPA Site/Spill ID Number 09R8, and DOJ Case Number 90-11-2-248/1. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of Arizona following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

b. At the time of payment, Settling Defendants shall send notice that payment has been made to the United States, to EPA, and to the Regional Financial Management Officer, in accordance with Section XXVII (Notices and Submissions).

c. The total amount to be paid by Setting Defendants pursuant to Subparagraph 54.a shall be deposited in the PGA North Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

55. Payments for Future Response Costs.

a. Settling Defendants shall pay to EPA all Future Response Costs not

inconsistent with the NCP. On a periodic basis the United States will send Settling Defendants a bill requiring payment that includes an accounting of direct and indirect costs incurred by EPA and its contractors with respect to this Consent Decree. Settling Defendants shall make all payments within 30 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 56. Settling Defendants shall make all payments required by this Paragraph by FedWire EFT, pursuant to the instructions set forth in Paragraph 54.a, or by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Number 09R8, and DOJ Case Number 90-11-2-248/1. Settling Defendants shall send the check(s) to:

EPA - Cincinnati Accounting Operations
Attention: Region 9 Receivables
P.O. Box 371099M
Pittsburgh, PA 15251

b. At the time of payment, Settling Defendants shall send notice that payment has been made to the United States, to EPA, and to the Regional Financial Management Officer, in accordance with Section XXVII (Notices and Submissions).

c. The total amount to be paid by Setting Defendants pursuant to this Paragraph shall be deposited in the PGA-North Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

56. Settling Defendants may contest payment of any Future Response Costs under Paragraph 55 if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill, and must be sent to the United States pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. Prior to or in conjunction with an objection, Settling Defendants may request some or all of the following additional supporting documentation from EPA: employee time reports, employee travel records,

contractor vouchers, interagency agreements with amendments and drawdowns, and cooperative agreements with amendments and drawdowns. In the event of an objection, the Settling Defendants shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 55. Simultaneously, the Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Arizona and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendants shall send to the United States, as provided in Section XXVII (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendants shall initiate the Dispute Resolution procedures in Section XX (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Defendants shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 55. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 55; Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

57. In the event that the payments required by Paragraph 54.a and Paragraph 58 are not made within 30 days of the Effective Date or the payments required by Paragraph 55 are not made within 30 days of the Settling Defendants' receipt of the bill, Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid under this Paragraph on Past Response Costs and the civil penalty set forth in Paragraph 58 shall begin to accrue on the Effective Date.

The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Section XXI (Stipulated Penalties). The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 55.

58. Payment of Civil Penalty.

a. Within 30 days of the Effective Date, Settling Defendant UPI shall pay a civil penalty to the EPA Hazardous Substance Superfund of $500,000 for violations alleged in the United States' Complaint. Payment shall be made by FedWire EFT pursuant to the instructions set forth in Paragraph 54.a.

b. At the time of payment, Settling Defendant UPI shall send notice that payment has been made to the United States, to EPA, and to the Regional Financial Management Officer, in accordance with Section XXVII (Notices and Submissions).

c. Defendant shall not deduct the civil penalty paid under this Paragraph in calculating its federal income tax.

## XVII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

59. Settling Defendants shall spend no less than $1,000,000 in "eligible SEP costs" to implement the SEP described below in accordance with the provisions of this Section XVII of the Consent Decree and Appendix F, which is attached hereto and incorporated by reference into and enforceable under this Consent Decree. "Eligible SEP costs" shall mean the costs of designing, planning, and implementing the SEP, but shall not include Settling Defendants' overhead, administrative expenses, legal fees, or contractor oversight.

60. Brownfields SEP. Settling Defendants shall spend $1,000,000 in eligible SEP costs for implementation of a Brownfields Inventory, Assessment, and Remediation project ("Brownfields SEP") in the City of Goodyear, Arizona, as described more fully in Appendix F. Settling Defendants shall expend these monies as set forth in Appendix F, with the goal of

completing Phase I assessment and inventory of 25 sites, Phase II assessment of 4 sites, and remediation of 3 sites.

61. The United States recognizes that Settling Defendants intend to contract with the City of Goodyear for the performance of services related to implementation of the SEP. By no later than sixty (60) days after entry of this Consent Decree, Settling Defendants shall submit to EPA for review and approval a contract that has been negotiated, but not executed, between Settling Defendants and the City of Goodyear under which Settling Defendants shall agree to conduct the SEP (the "SEP Agreement") consistent with the requirements of this Consent Decree, including Appendix F. The SEP Agreement shall not permit the transfer of SEP monies from the Settling Defendants to the City of Goodyear; except that, in the implementation of the SEP, the Settling Defendants may contract with the City of Goodyear for the performance of legal, administrative, and engineering services, at fair market value, required to implement the SEP.

62. The SEP Agreement shall: (1) contain an escrow agreement including the creation of an escrow account to be funded by Settling Defendants with the sum of $1,000,000 within thirty (30) days of the effective date of the SEP Agreement; (2) allocate eligible SEP costs based on a budget for the SEPs to be provided by the City of Goodyear that is consistent with this Consent Decree and Appendix F and to be incorporated in the SEP Agreement; (3) contain a detailed description of the tasks to be performed for the implementation of the SEP and a schedule for completion of those tasks within three years from the date of EPA's approval of the SEP Agreement; (4) contain criteria, including a description of the costs to be incurred and an explanation of why those costs are eligible SEP costs, that must be satisfied by the City of Goodyear before the escrow agreement can disburse funds; and (5) provide a mechanism(s) pursuant to which Settling Defendants can enforce compliance by the City of Goodyear with the terms of the SEP Agreement consistent with the applicable provisions of the Consent Decree, including Appendix F.

63. Upon receipt of the proposed SEP Agreement, EPA shall: (1) approve the SEP Agreement; (2) disapprove the SEP Agreement in whole or in part; (3) approve the SEP

Agreement upon specified conditions; or (4) any combination of the above. In undertaking any partial approval or disapproval of the contract, EPA's City of Goodyear SEP Project Coordinator may consult with the City of Goodyear and take into consideration the City of Goodyear's position on any areas of potential disapproval. By no later than sixty (60) days after EPA notifies Settling Defendants of its disapproval or its direction to modify the SEP Agreement, Settling Defendants shall submit a modified contract to EPA for approval, unless the City of Goodyear does not agree to the proposed modifications.

64. In the event that a resubmitted SEP Agreement or portion thereof is disapproved in whole or in part or approved with conditions by EPA, EPA may again require Settling Defendants to resubmit the SEP Agreement and/or include the conditions in a further revised SEP Agreement. If, at any time after EPA's first disapproval in whole or in part of a resubmitted SEP Agreement, or EPA's approval of such resubmitted SEP Agreement with conditions, Settling Defendants disagree with EPA's comments on or requests regarding a resubmitted SEP Agreement or portion thereof, Settling Defendants shall have the right to invoke the dispute resolution provisions of Section XX (Dispute Resolution).

65. Upon approval by EPA, Settling Defendants and the City of Goodyear shall execute the approved SEP Agreement, and the executed SEP Agreement shall be incorporated herein as part of this Consent Decree. Settling Defendants shall complete all actions required of them under the SEP Agreement in accordance with the schedule set forth in the approved SEP Agreement, unless modified pursuant to Paragraph 66. If Settling Defendants fail to meet any deadline established in the SEP Agreement, within thirty (30) days of such failure, Settling Defendants shall notify EPA's City of Goodyear's SEP Project Coordinator in writing of such failure, the reason(s) for the failure, and shall set forth a schedule for completing the SEP.

66. Settling Defendants and the City of Goodyear, with the written approval of EPA, may modify the dates set forth in the original SEP Agreement as necessary to achieve the objectives of this Section. Settling Defendants shall provide reasonable notice to EPA's City of Goodyear SEP Project Coordinator regarding any delays or impediments to implementation of the SEP or a change in the allocation of SEP funds and shall communicate with EPA's City of

Goodyear SEP Project Coordinator regarding the rescheduling of any originally-scheduled milestone, implementation dates, or changes in allocation. A modification to the dates initially set forth in the approved SEP Agreement or a change in allocation of SEP funds shall be signed in writing by Settling Defendants and the City of Goodyear. Neither the United States nor Settling Defendants shall be required to file any such modifications with the Court in order for the modifications to be effective.

67. If Settling Defendants and the City of Goodyear cannot reach agreement on a SEP Agreement within the time period set forth in Paragraph 61, or if the City of Goodyear does not approve a proposed modification to the SEP Agreement, Settling Defendants shall be liable for stipulated penalties pursuant to Paragraph 96 of this Decree.

68. Satisfactory Completion.

a. Settling Defendants are responsible for the satisfactory completion of the SEP in accordance with the requirements of the Consent Decree. "Satisfactory completion" means that Settling Defendants shall ensure completion of the project requirements in accord with all specifications in this Section XVII of the Consent Decree, in Appendix F, and in the approved SEP Agreement.

b. Settling Defendants shall also ensure that they spend not less than the total SEP amount set forth in Paragraph 59 above.

69. Project Coordinators and Contact Person.

a. EPA's City of Goodyear SEP Project Coordinator is:

Mary Aycock
Remedial Project Manager
EPA Region IX
75 Hawthorne Street, SFD-8-2
San Francisco, CA 94105
Tel: (415) 972-3289

b. Settling Defendants' City of Goodyear SEP Project Coordinator is:

Anthony D. Pantaleoni
Vice President of Environment,
Health & Safety
Crane Co.
100 First Stamford Place
Stamford, CT 06902

Tel: (203) 363-7314

c. The City of Goodyear SEP Project Contact Person for the City of Goodyear is:

David Iwanski
Water Resources Manager - Water Management
City of Goodyear
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Tel: (623) 882-7062

d. EPA and Settling Defendants each shall have the right to change their respective City of Goodyear SEP Project Coordinators, and the City of Goodyear shall have the right to change its SEP Project Contact Person. Such a change shall be accomplished by notifying the others in writing as soon as practicable before or after the change occurs.

70. Except where explicitly stated otherwise, Settling Defendants shall send all submissions, plans, reports, notices, correspondence, or other documents required under Section XVII of this Decree to EPA's City of Goodyear SEP Project Coordinator and to the City of Goodyear SEP Contact Person. The SEP Agreement shall provide that the City of Goodyear shall be required to send all such submissions to EPA's City of Goodyear SEP Project Coordinator. EPA shall send all notices, comments, correspondence, or other documents to Settling Defendants' City of Goodyear SEP Project Coordinator and to the City of Goodyear SEP Contact Person. Submission of all plans, reports, notices, comments, correspondence, or other documents shall be effective as of the date of mailing.

71. Within thirty (30) days of the completion of the SEP, Settling Defendants shall submit a SEP Completion Report to EPA in accordance with Section XXVII of this Consent Decree (Notices and Submissions). Settling Defendants are required to submit the SEP Completion Report even if they have already expended at least $1,000,000 on eligible SEP costs. The SEP Completion Report shall contain the following information:

a. a detailed description of the SEP as implemented;

b. a description of any problems encountered in completing the SEP and the solutions thereto;

c. an itemized list of all eligible SEP Costs; and

d. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if any).

Settling Defendants may incorporate information and statements provided by the City of Goodyear regarding completion of the SEP into Settling Defendants' SEP Completion Report.

72. EPA may require information in addition to that described above, in order to determine the adequacy of SEP completion or eligibility of SEP costs, and Settling Defendants shall provide such information.

73. After receiving the SEP Completion Report, EPA shall notify Settling Defendants whether or not the SEP has been satisfactorily completed. If the SEP has not been satisfactorily completed in accordance with all applicable requirements of this Consent Decree, including Appendix F, or the eligible SEP costs expended are less than the amounts set forth in Paragraph 59, stipulated penalties may be assessed pursuant to Paragraph 96 of this Consent Decree.

74. Disputes concerning the satisfactory completion of the SEPs and eligible SEP costs may be resolved under Section XX of this Consent Decree (Dispute Resolution). Except as set forth in Paragraph 64, no other disputes arising under this Section XVII shall be subject to Dispute Resolution.

75. With regard to the SEP, Settling Defendants certify the truth and accuracy of each of the following:

a. that, as of the date of executing this Consent Decree, Settling Defendants or the City of Goodyear are not required to perform or develop the SEP by any federal, state, or local law or regulation and are not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

b. that the SEP is not a project that Settling Defendants were planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Decree;

c. that Settling Defendants have not received, and are not negotiating to receive, credit for the SEP in any other enforcement action; and

d. that Settling Defendants will not receive any reimbursement for any portion of the SEP from any other person.

76. Settling Defendants agree, and the SEP Agreement shall provide, that any public statement, oral or written, in print, film, or other media, made by Settling Defendants or the City of Goodyear making reference to the SEP under this Consent Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken on behalf of the U.S. Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act."

77. Settling Defendants shall not deduct the cost of the SEP from their federal, state, or local taxes.

## XVIII. INDEMNIFICATION AND INSURANCE

78. Settling Defendants' Indemnification of the United States.

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

Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Settling Defendants notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 78 and shall consult with Settling Defendants prior to settling such claim.

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

80. No later than 15 days before commencing any on-site Work, Settling Defendants shall secure and shall maintain comprehensive general liability insurance with limits of $3 million dollars, combined single limit, and automobile liability insurance with limits of $1 million dollars, combined single limit, naming the United States as an additional insured. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants

need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

## XIX. FORCE MAJEURE

81. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

82. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region IX, within 48 hours of when Settling Defendants first know that the event might cause a delay. Within 7 days thereafter, Settling Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect(s) of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare, or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude

Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

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

84. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 81 and 82 above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

## XX. DISPUTE RESOLUTION

85. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising

under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

86. Informal Negotiation.

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

b. Settling Defendants may make a written request to the United States to mediate any dispute arising hereunder. The United States' decision regarding participation in mediation is not subject to dispute resolution or judicial review. If the United States agrees to participate in mediation, the Parties will enter into a separate agreement regarding the procedures and schedule for such mediation.

87. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 15 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 88 or Paragraph 89.

b. Within 21 days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal

dispute resolution should proceed under Paragraph 88 or 89. Within 5 days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 88 or 89, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 88 and 89.

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

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

b. The Director of the Superfund Division, EPA Region IX, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 88.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraphs 88.c and d.

c. Any administrative decision made by EPA pursuant to Paragraph 88.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within 10 days of receipt

of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph 88, Settling Defendants shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 88.a.

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

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 87, the Director of the Superfund Division, EPA Region IX, will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

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

90. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of the Settling Defendants under this Consent Decree not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 102. Notwithstanding the stay of

payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties).

## XXI. STIPULATED PENALTIES

91. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 92, 93, and 94 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XIX (Force Majeure). "Compliance" by Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

92. Stipulated Penalty Amounts - Work (Category 1).

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 92.b:

| Penalty Per Violation Per Day | Period of Noncompliance |
|---|---|
| $2,000 | 1st through 14th day |
| $5,000 | 15th through 44th day |
| $10,000 | 45th day and beyond |

b. Failure to comply with any of the following requirements as set forth in this Consent Decree, the SOW, or any other applicable EPA-approved work plans shall result in stipulated penalties in the amounts set forth in Paragraph 92.a:

(1) Implementation of Final Initial Groundwater Investigation Work Plan (SOW Task 2.2.1);

(2) Implementation of Wellhead Treatment/Alternative Water Supply Work Plan (SOW Task 4.3);

(3) Implementation of Main Drywells Source Area Remediation Work

Plan (SOW Task 5.6);

(4) Implementation of Soil Gas Investigation Workplan (SOW Task 8.3);

(5) Implementation of Final Revised Air Sampling Workplan (SOW Task 9.2);

(6) Implementation of Source Areas, Soils, and Facility Structures Investigation Plan (SOW Task 10.4);

(7) Completion of additional investigation activities, if EPA determines such activities are necessary;

(8) Completion of Remedial Action construction (SOW Task 14.5);

(9) Timely payment of Future Response Costs;

(10) Timely payment of Past Response Costs; and

(11) Timely payment of Civil Penalties.

93. Stipulated Penalty Amounts - Work (Category 2).

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 93.b:

| Penalty Per Violation Per Day | Period of Noncompliance |
|---|---|
| $1,000 | 1st through 14th day |
| $2,500 | 15th through 44th day |
| $5,000 | 45th day and beyond |

b. Failure to comply with any of the following requirements as set forth in this Consent Decree, the SOW, or any other applicable EPA-approved work plans shall result in stipulated penalties in the amounts set forth in Paragraph 93.a:

(1) Implementation of Operation and Maintenance Plan for existing groundwater remedy (SOW Task 1.3);

(2) Implementation of Operation and Maintenance Plan for existing soil vapor extraction system (SOW Task 7.4); and

(3) Implementation of Operation and Maintenance Plan Amendments

as developed pursuant to SOW Task 14.6.

94. Stipulated Penalty Amounts - Reports.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 94.b:

| Penalty Per Violation Per Day | Period of Noncompliance |
|---|---|
| $1,000 | 1st through 14th day |
| $2,000 | 15th through 30th day |
| $4,000 | 31st day and beyond |

b. Failure to submit the following reports in a timely or adequate manner as set forth in Section XI (EPA Approval of Plans and Other Submissions) shall result in stipulated penalties in the amounts set forth in Paragraph 94.a:

(1) Draft and Final Initial Groundwater Investigation Work Plan and required updates (SOW Task 2.2);

(2) Groundwater Flow Model (SOW Task 2.5.1)

(3) Groundwater Contaminant Fate and Transport Model (SOW Task 2.5.2);

(4) Draft and Final Groundwater Investigation Report (SOW Task 2.7);

(5) Draft and Final Main Drywells Source Area Investigation Report (SOW Task 5.7);

(6) Perchlorate Treatability Study Report (SOW Task 6.2);

(7) Soil Gas Investigation Work Plan (SOW Task 8.2);

(8) Draft and Final Soil Gas Investigation Report (SOW Task 8.4);

(9) Air Sampling Work Plan (SOW Task 9.1);

(10) Draft and Final Air Sampling Investigation Report (SOW Task 9.3);

(11) Draft and Final Site Evaluation Report (SOW Task 10.1);

(12) Source Areas, Soils, and Facility Structures Investigation Work

Plan (SOW Task 10.2);

(13) Draft and Final Source Areas, Soils, and Facility Structures Remedial Investigation Report (SOW Task 10.11);

(14) Baseline Human Health Risk Assessment Amendment (SOW Task 11.1);

(15) Screening Level Ecological Risk Assessment (SOW Task 11.2);

(16) Draft and Final Supplemental Feasibility Study Report(s) (SOW Task 12.3);

(17) Remedial Design Work Plan(s) (SOW Task 13.2);

(18) Final Design Report (SOW Task 13.4);

(19) Remedial Action Work Plan (SOW Task 14.1);

(20) Final Remedial Action Construction Completion Report (SOW Task 14.9); and

(21) Final Work Completion Report (SOW Task 14.10).

c. The following stipulated penalties shall accrue per violation per day for failure to submit any other reports or written documents in a timely or adequate manner as set forth in Section XI (EPA Approval of Plans and Other Submissions):

| Penalty Per Violation Per Day | Period of Noncompliance |
|---|---|
| $500 | 1st through 14th day |
| $1,000 | 15th through 30th day |
| $1,500 | 31st day and beyond |

95. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 108 of Section XXII (Covenants Not to Sue by Plaintiff), Settling Defendants shall be liable for a stipulated penalty in the amount of $800,000.00.

96. Supplemental Environmental Project Compliance. In the event that Settling Defendants fail or are unable to comply with any of the terms or provisions of this Consent Decree relating to the performance of the SEP described in Section XVII of this Decree, and/or to the extent that the actual expenditures of eligible SEP costs for the SEP do not equal or exceed

the amounts required to be spent in Paragraph 59 and Appendix F, Settling Defendants shall be liable for stipulated penalties according to the provisions set forth below:

a. If Settling Defendants satisfactorily complete the SEP, but Settling Defendants spend less than $1,000,000 in total eligible SEP costs, Settling Defendants shall pay as a stipulated penalty the difference between the amount Settling Defendants have expended and $1,000,000.

b. If Settling Defendants do not satisfactorily complete the SEP, but the United States determines, upon a demonstration by Settling Defendants: (i) that Settling Defendants have made good faith and timely efforts to complete the SEP; (ii) that Settling Defendants were not responsible for their inability to satisfactorily complete the SEP; and (iii) Settling Defendants spend less than $1,000,000 on the SEP, Settling Defendants shall pay as a stipulated penalty the difference between the amount that Settling Defendants have expended and $1,000,000. The United States will consider Settling Defendants' timely payment of funds into escrow as prescribed by Paragraph 62 in evaluating whether Settling Defendants have made good faith and timely efforts to complete the SEP.

c. If Settling Defendants do not satisfactorily complete the SEP and cannot demonstrate that they were not responsible for their inability to satisfactorily complete the SEP as set forth in Paragraph 96.b above, Settling Defendants shall pay as a stipulated penalty the difference between the amount that Settling Defendants have expended and $1,000,000, plus an additional $200,000.

97. SEP Deliverables. For each failure to timely submit: (1) the SEP Agreement as required pursuant to Paragraphs 61, 62, or 63, or (2) the SEP Completion Report as required by Paragraph 71, Settling Defendants shall be liable for stipulated penalties in the amount of $750 for each day after the submission was originally due until the document is submitted.

98. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of

Plans and Other Submissions) during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Superfund Division, EPA Region IX, under Paragraph 88.b or 89.a of Section XX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

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

EPA - Cincinnati Accounting Operations
Attention: Region 9 Receivables
P.O. Box 371099M
Pittsburgh, PA 15251

Settling Defendants shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #09R8, the DOJ Case Number 90-11-2-248/1, and the name

and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States and EPA as provided in Section XXVII (Notices and Submissions).

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

102. Penalties shall continue to accrue as provided in Paragraph 98 during any dispute resolution period, but need not be paid until the following:

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

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Paragraph 102.c below;

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

103. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as Interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 100.

104. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Consent Decree or of the statutes and

regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

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

## XXII. COVENANTS NOT TO SUE BY PLAINTIFF

106. Covenants Not to Sue by Plaintiff. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraph 107 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA for performance of the Work and for recovery of Past Response Costs and Future Response Costs. The United States also covenants not to sue or to take administrative action against Settling Defendants' Related Persons pursuant to Sections 106 and 107(a) of CERCLA for performance of the Work and for recovery of Past Response Costs and Future Response Costs, but only to the extent that such persons are alleged to be responsible persons at the Site solely due to their status as officers, directors, or employees of Settling Defendants, and subject to the limitations in Paragraphs 107 and 109. These covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraphs 54.a and 58 of Section XVI (Payments for Response Costs and Civil Penalty). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants, and to the Settling Defendants' Related Persons to the limited extent described above, and do not extend to any other person.

107. General reservations of rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants and Settling Defendants' Related Persons with respect to all matters not expressly included within Plaintiff's covenants

not to sue in Paragraph 106 or the resolution of liability in Paragraph 115. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants and Settling Defendants' Related Persons with respect to:

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

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

c. liability based upon the Settling Defendants' ownership or operation of the Site, or upon the Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD and ESDs, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Settling Defendants;

d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

e. criminal liability;

f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action;

g. liability for the final response action for the Site; and

h. liability for costs that the United States will incur that are related to the Site but are not within the definition of Future Response Costs.

108. Work Takeover.

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

such notice.

b. If, after expiration of the 10-day notice period specified in Paragraph 108.a, Settling Defendants have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portions of the Work as EPA deems necessary ("Work Takeover"). EPA shall notify Settling Defendants in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 108.b;

c. Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution), Paragraph 88, to dispute EPA's implementation of a Work Takeover under Paragraph 108.b. However, notwithstanding Settling Defendants' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 108.b until the earlier of (i) the date that Settling Defendants remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice or (ii) the date that a final decision is rendered in accordance with Section XX (Dispute Resolution), Paragraph 88, requiring EPA to terminate such Work Takeover.

d. After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any financial security mechanism(s) provided pursuant to Section XIII of this Consent Decree, in accordance with the provisions of Paragraph 48.b of that Section. If and to the extent that EPA is unable to secure the resources guaranteed under any such financial security mechanism(s) and the Settling Defendant(s) fail to remit a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed, all in accordance with the provisions of Paragraph 48, any unreimbursed costs incurred by EPA in performing Work under the Work Takeover shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVI, Paragraph 55 (Payments for Future Response Costs).

109. The covenant not to sue Settling Defendants' Related Persons in Paragraph 106 shall be null and void with respect to any such Person that sues or asserts any type of claim or

cause of action against the United States described in Paragraph 111.

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

## XXIII. COVENANTS BY SETTLING DEFENDANTS

111. Covenant Not to Sue. Subject to the reservations in Paragraph 112, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Work, past response actions, and Past and Future Response Costs as defined herein or this Consent Decree, including, but not limited to:

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

b. any claims against the United States, including any department, agency, or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site;

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

d. any direct or indirect claim for disbursement from the PGA-North Special Account.

Except as provided in Paragraph 114 (Waiver of Claims Against De Micromis Parties) and Paragraph 120 (waiver of claim-splitting defenses), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 107.b - .d or 107.g - .h, but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

112. The Settling Defendants reserve, and this Consent Decree is without prejudice to:

a. Claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of

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

b. Claims alleged by the Settling Defendants in Counts 1 and 2 of their complaint filed on November 13, 2003, and in Counts 1 and 2 of their counterclaim filed on September 13, 2004, against the United States and related parties in the pending action in the United States District Court for the District of Arizona, captioned *Crane Co. et al. v. United States et al.*, CIV 03-2226-PHX-ROS, CIV 04-1400-PHX-ROS (Consolidated), or other claims for the recovery of costs of investigating and remediating environmental contamination at the Site arising out of the same transactions or occurrences that form the subject matter of Settling Defendants' pending claims; provided, however, that nothing in this Paragraph shall alter or limit the United States' procedural or substantive rights or defenses with respect to any such claims.

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

114. Waiver of Claims Against De Micromis Parties. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if:

a. the materials contributed by such person to the Site containing hazardous

substances did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials.

b. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that Settling Defendants may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendants.

## XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

115. Upon the Effective Date, this Consent Decree shall resolve the United States' claims pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), to obtain penalties for failure to comply with the terms of the UAOs (EPA Docket Nos. 90-20 and 9-2003-1), and pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), to obtain punitive damages for failure to comply with the terms of the UAOs (EPA Docket Nos. 90-20 and 9-2003-1), as alleged in the Complaint filed in this matter.

116. Except as provided in Paragraph 114 (Waiver of Claims Against De Micromis Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Except as provided in Paragraph 114 (Waiver of Claims Against De Micromis Parties), each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

117. Contribution Protection.

a. Except as set forth Paragraph 117.b, below, the Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants, and Settling Defendants' Related Persons to the extent that such persons are alleged to be responsible persons

at the Site solely due to their status as officers, directors, or employees of Settling Defendants, are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree. Matters addressed in this Consent Decree are the Work to be performed pursuant to the terms of this Consent Decree and EPA's Past Response Costs and Future Response Costs.

b. This Consent Decree, including Paragraph 117.a, shall not affect the United States' ability to assert any defense in or relating to Settling Defendants' pending action against the United States in the United States District Court for the District of Arizona, captioned *Crane Co. et al. v. United States et al.*, CIV 03-2226-PHX-ROS, CIV 04-1400-PHX-ROS (Consolidated).

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

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

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

121. Upon the Effective Date, this Consent Decree supersedes and extinguishes the obligations imposed on Settling Defendant Unidynamics/Phoenix, Inc. under the terms of the UAOs (EPA Docket Nos. 90-20 and 9-2003-1), and resolves the United States' claims alleged in the Complaint in this matter related to the UAOs as set forth in Sections XXII (Covenants Not to Sue by Plaintiff) and XXIV (Effect of Settlement; Contribution Protection).

## XXV. ACCESS TO INFORMATION

122. Except as otherwise provided in Paragraph 123, Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

123. Business Confidential and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7) and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information in accordance with the procedures of 40 C.F.R. § 2.205.

b. The Settling Defendants may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing

documents, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information: and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

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

## XXVI. RETENTION OF RECORDS

125. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 51.b of Section XIV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, including all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Settling Defendants must also retain, and instruct their contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in their possession or control or which come into their possession or control that relate in any manner to the performance of the Work, provided, however, that Settling Defendants (and their contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

126. At the conclusion of this document retention period, Settling Defendants shall

notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall deliver any such records or documents to EPA. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

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

## XXVII. NOTICES AND SUBMISSIONS

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

respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-248/1

Keith Takata
Director, Superfund Division
United States Environmental Protection Agency
Region IX - SFD-1
75 Hawthorne Street
San Francisco, CA 94105
Re: PGA-North Superfund Site

As to EPA:

Mary Aycock
EPA Project Coordinator
United States Environmental Protection Agency
Region IX - SFD-8-2
75 Hawthorne Street
San Francisco, CA 94105
Re: PGA-North Superfund Site

Bethany Dreyfus
Assistant Regional Counsel
United States Environmental Protection Agency
Region IX - ORC-3
75 Hawthorne Street
San Francisco, CA 94105
Re: PGA-North Superfund Site

As to the Regional Financial Management Officer:

David Wood, PMD-6
Superfund Accounting Program
Policy and Management Division
United States Environmental Protection Agency
Region IX - PMD-6
75 Hawthorne Street
San Francisco, CA 94105
Re: PGA-North Superfund Site

As to the State:

Cathy O'Connell
Senior Remedial Projects Manager
Waste Programs Division
Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, AZ 85007

As to the Settling Defendants:

Anthony D. Pantaleoni
Vice President of Environment,
Health & Safety
Crane Co.
100 First Stamford Place
Stamford, CT 06902

## XXVIII. EFFECTIVE DATE

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

## XXIX. RETENTION OF JURISDICTION

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

## XXX. APPENDICES

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

"Appendix A" is the ROD.

"Appendix B" is the 1993 and 2003 ESDs.

"Appendix C" is the SOW.

"Appendix D" is the map showing the location of the Unidynamics Property.

"Appendix E" is the draft Easement and Declaration of Restrictive Covenants.

"Appendix F" is the description of the Brownfields Inventory, Assessment, and

Remediation SEP.

"Appendix G" is the list of requirements for compliance with the financial assurance option set forth in Paragraph 47.f of this Consent Decree.

"Appendix H" is the property description for Parcels B and C, along with a map showing the parcels.

## XXXI. COMMUNITY RELATIONS

132. Settling Defendants shall propose to EPA and the State their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA 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 Site.

## XXXII. MODIFICATION

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

134. Except as provided in Paragraph 14 (Modification of the SOW or Related Work Plans), no material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Defendants, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(B)(ii). Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document, or material modifications to the SOW that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(B)(ii), may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendants.

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

## XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

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

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

## XXXIV. SIGNATORIES/SERVICE

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

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

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

## XXXV. FINAL JUDGMENT

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

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

SO ORDERED THIS __ DAY OF _____, 20__.

_____
ROSLYN O. SILVER
United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *Crane Co. et al. v. United States et al.*, CIV 03-2226-PHX-ROS and CIV 04-1400-PHX-ROS (Consolidated), relating to the Phoenix-Goodyear Airport (North) Superfund Site.

FOR THE UNITED STATES OF AMERICA

March 27, 2006
Date

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

April 3, 2006
Date

ANN C. HURLEY
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
401 Howard Street, Suite 1050
San Francisco, CA 94105

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *Crane Co. et al. v. United States et al.*, CIV 03-2226-PHX-ROS and CIV 04-1400-PHX-ROS (Consolidated), relating to the Phoenix-Goodyear Airport (North) Superfund Site.

FOR THE UNITED STATES OF AMERICA

27 MARCH '06
Date

PAUL K. CHARLTON
United States Attorney
District of Arizona

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4/7/06
Date

for Nancy Lindsay
KEITH TAKATA
Superfund Division Director
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

4/7/06
Date

Bethany A. Dreyfus
BETHANY A. DREYFUS
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *Crane Co. et al. v. United States et al.*, CIV 03-2226-PHX-ROS and CIV 04-1400-PHX-ROS (Consolidated), relating to the Phoenix-Goodyear Airport (North) Superfund Site.

FOR CRANE CO.

3/27/06
Date

AUGUSTUS I. duPONT
Vice President, General Counsel and Secretary
Crane Co.
100 First Stamford Place
Stamford, CT 06902

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

ROGER K. FERLAND
Quarles & Brady Streich Lang, LLP
One Renaissance Square
Two North Central Avenue
Phoenix, AZ 85004-2391
Tel: (602) 229-5607

Attorney for Crane Co.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *Crane Co. et al. v. United States et al.*, CIV 03-2226-PHX-ROS and CIV 04-1400-PHX-ROS (Consolidated), relating to the Phoenix-Goodyear Airport (North) Superfund Site.

FOR UNIDYNAMICS/PHOENIX, INC.

3/27/06
Date

A.D. Pantaleoni

ANTHONY D. PANTALEONI
Vice President of Environment,
Health & Safety
Crane Co.
100 First Stamford Place
Stamford, CT 06902

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

ROGER K. FERLAND
Quarles & Brady Streich Lang, LLP
One Renaissance Square
Two North Central Avenue
Phoenix, AZ 85004-2391
Tel: (602) 229-5607

Attorney for Unidynamics/Phoenix, Inc.