SFUND RECORDS CTR
2126965

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
U.S. DEPARTMENT OF JUSTICE
950 Penn Ave., NW, Room 2718
Washington D.C. 20530

CHERYL SMOUT
Environment Enforcement Section
Environment and Natural Resources Division
U.S. DEPARTMENT OF JUSTICE
P.O. Box 7611
Washington D.C. 20044-7611

FILED
CLERK, U.S. DISTRICT COURT
MAR 23 2004
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

LODGED
2003 OCT 16 PM 2:
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CA.
LOS ANGELES
BY:

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BROTHERS MACHINE & TOOL, INC.; CHASIN TRUST; HANSON TRUST; SEARING REVOCABLE TRUST; LUCILLE F. FERRIS LIVING TRUST; JOHN I. MAPLE FAMILY PARTNERSHIP; THOMAS J. MERSITS; IRENE L. MERSITS TRUST; DAVID JOSEPH NEPTUNE FAMILY TRUST; O.R.P. LLC; DANNY R. PEOPLES AND DENA PEOPLES; EDDIE E. TIMMONS; EUGENE GERALDINE WELTER TRUST; GRAZIANO TRUST; LOS NIETOS PROPERTY LLC; AND JOVITA L. ORTEGA

Defendants.

LACV03-7406 ~~DDP~~ SW (RNBx)

CIVIL ACTION NO. _____

CONSENT DECREE

DOCKETED ON CM
MAR 25 2004
BY 011

ORIGINAL

TABLE OF CONTENTS

I. BACKGROUND 1
II. JURISDICTION 3
III. PARTIES BOUND 3
IV. DEFINITIONS 4
V. GENERAL PROVISIONS 7
VI. ACCESS AND INSTITUTIONAL CONTROLS 8
VII. REMEDY REVIEW 15
VIII. REPORTING REQUIREMENTS 17
IX. FORCE MAJEURE 17
X. DISPUTE RESOLUTION 19
XI. STIPULATED PENALTIES 22
XII. COVENANTS NOT TO SUE BY PLAINTIFF 25
XXII. COVENANTS BY SETTLING DEFENDANT 28
XIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION 29
XV. ACCESS TO INFORMATION 31
XVI. RETENTION OF RECORDS 32
XVII. NOTICES AND SUBMISSIONS 33
XVIII. EFFECTIVE DATE 34
XIX. RETENTION OF JURISDICTION 34
XX. APPENDICES 35
XXI. MODIFICATION 35
XXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT 35
XXIII. SIGNATORIES/SERVICE 36
XXIV. FINAL JUDGMENT 37

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has concurrently 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.

B. The United States in its complaint seeks, inter alia: performance of certain response work by the defendant at the Waste Disposal, Inc. ("WDI") Superfund Site in Santa Fe Springs, California, consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the California Department of Toxic Substances Control ("DTSC") and the California Hazardous Substances Account on April 10, 2001, of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided DTSC 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), EPA notified the National Oceanic and Atmospheric Administration, the U.S. Department of the Interior, the California Environmental Protection Agency, the California Department of Toxic Substances Control, the California State Water Resources Control Board, the California Resources Agency, the California Department of Fish and Game, and the California State Lands Commission on October 5 and 9, 2001 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal or State trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

E. The defendant that has entered into this Consent Decree ("Settling Defendant") does not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor does it acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on July 22, 1987, 52 Fed. Reg. 27620.

G. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, EPA commenced, on December 22, 1987, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430. EPA completed a Remedial Investigation ("RI") Report in November, 1990 and completed a Feasibility Study (""FS") in 1993. EPA signed a Record of Decision ("ROD") for the Site in 1993. EPA determined that subsequent investigation and design activities indicated a need to revise the remedy and EPA and certain potentially responsible parties ("PRPs") undertook additional RI/FS activities.

H. Certain PRPs completed a Supplemental Feasibility Study ("SFS") Report in May, 2001.

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the SFS and of the proposed plan for remedial action on May 31, 2001, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

J. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Amended Record of Decision ("Amended ROD"), executed on June 21, 2002, on which DTSC has given its concurrence. The Amended ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

K. 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 Defendant. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant 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 the Settling Defendant and its heirs, successors and assigns. Any change in ownership or corporate status of Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Defendant's responsibilities under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"Amended Record of Decision" or "Amended ROD" shall mean the EPA Amended Record of Decision relating to the Site, signed on June 21, 2002, by the Regional Administrator, EPA Region IX, or his/her delegate, and all attachments thereto. The Amended ROD is attached as Appendix A.

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

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

"DTSC" shall mean the California Department of Toxic Substances Control and any of its successor departments or agencies.

"Effective Date" shall be the effective date of this Consent Decree as provided in Paragraph 60.

"Environmental Restriction Covenant" shall mean a restrictive covenant under California law, 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 9.a of this Consent Decree; (ii) grants the right to the WDIG Site Trust to enforce the land/water use restrictions listed in Paragraph 10.a 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 the Amended ROD; and (iii) provides that EPA and DTSC shall be third party beneficiaries of the environmental restriction covenant with rights to enforce the environmental restriction covenant; and (iv) is in substantially the form of Appendix C.

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

"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.

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

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

"Plaintiff" shall mean the United States.

"Property" shall mean that portion of the WDI Superfund Site owned by Settling Defendant and described more particularly in Appendix D.

"Remedial Action" shall mean those activities to be undertaken by Settling Defendant to implement the Amended ROD.

"Response Actions" shall mean any and all removal and remedial actions and all enforcement activities related thereto.

"Response Costs" shall mean all costs, including, but not limited to, direct or indirect costs, that the United States has paid or will pay in connection with the Site, that are not inconsistent with the NCP, and all necessary costs that any other person has paid or will pay in connection with the Site that are consistent with the NCP.

"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).

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

"Settling Defendant" shall mean Brothers Machine & Tool, Inc..

"Site" shall mean the WDI Superfund Site, located at Los Nietos Road at Greenleaf Avenue in Santa Fe Springs, Los Angeles County, California, and depicted generally on the map attached as Appendix B.

"State" shall mean the State of California.

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

"Waste Material(s)" 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); (4) any "hazardous substance" under California Health and Safety Code §§ 25316 and 25317; and (5) all material identified as waste or sump material in site investigations conducted prior to the Effective Date of this Consent Decree, irrespective of whether it is classified as a hazardous substance, pollutant or contaminant, or solid waste under the above statutes.

"WDIG Site Trust" shall mean the trust established by certain other PRPs pursuant to the Consent Decree lodged in this Court in Civil Action No. 03-1593WJR. The WDIG Site Trust shall be the covenantee of the Environmental Restriction Covenant.

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

V. GENERAL PROVISIONS

4. 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 implementation of institutional controls at the Site by the Settling Defendant, and to resolve the claims of Plaintiff against Settling Defendant as provided in this Consent Decree.

5. Commitments by Settling Defendant.

a. Settling Defendant shall perform the Work in accordance with this Consent Decree and the Amended ROD, including, but not limited to, executing and recording an Environmental Restriction Covenant on Settling Defendant's Property at the Site, as required herein.

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

7. Permits.

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

8. Notice to Successors-in-Title.

a. 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 shall give the successor-in-title written notice of (i) this Consent Decree, and (ii) the Environmental Restriction Covenant, attached as Appendix C, executed and recorded pursuant to Section VI (Access and Institutional Controls). At least 30 days prior to such conveyance, Settling Defendant shall also give written notice to EPA of the proposed conveyance, including the name and address of the successor-in-title, and the date on which notice of the Consent Decree, and Environmental Restriction Covenant, was given to the successor-in-title.

b. In the event of any such conveyance, the Settling Defendant's obligations under this Consent Decree, including, but not limited to, its obligations to abide by such land/water use restrictions, pursuant to Section VI (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the Settling Defendant. In no event shall the conveyance release or otherwise affect the liability of the Settling Defendant to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, the successor-in-title may perform some or all of the Work under this Consent Decree.

VI. ACCESS AND INSTITUTIONAL CONTROLS

9. Settling Defendant shall:

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

(1) Monitoring of investigation, removal, remedial or other response actions at the Site;

(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) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section XV (Access to Information);

(7) Assessing Settling Defendant's compliance with this Consent Decree;

(8) 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.

(9) Installing, monitoring, and maintaining liquid, ground water, soil gas and other wells or probes; and

(10) Installing, monitoring, and operating any monitoring and extraction system, including liquids and gas extraction systems.

10. Land/Water Use Restrictions:

a. Settling Defendant shall, 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, or protectiveness of the remedial measures implemented pursuant to the Amended ROD. Such restrictions include, but are not limited to:

(1) Placement of warning signs or other posted information shall be allowed and, once posted, no removal or interference with such signs or information shall be permitted.

(2) Placement of site access controls, such as gates or fencing, shall be allowed and shall not be damaged or circumvented.

(3) The Property shall not be used in any manner that may interfere with or affect the integrity of the remedial cap or other components of the remedy, as constructed pursuant to the Amended ROD.

(4) Construction not approved by EPA that impacts any of the remedial capping or other remedy components shall not occur.

(5) No interferences with or alterations to the grading, vegetation and surface water and drainage controls shall be made.

(6) Portions of the Property underlain by Waste Materials and in soil gas noncompliance areas shall not be regraded.

(7) Areas of asphalt or concrete pavement shall not be removed or improved.

(8) No penetrations or interferences (including but not limited to, utility trench excavations, excavations for fence posts, excavations for planting trees or large bushes, foundation excavations, and foundation piles) with the remedial cap or any other areas with remedial controls shall be made.

(9) Deep-rooting plants (plants whose root systems will penetrate more than two feet below ground surface) shall not be planted.

(10) Obtain approval from EPA for settings of irrigation controls in areas underlain by Waste Materials. Such settings shall not be changed without the prior written approval of EPA in accordance with Paragraph 10.b.

(11) Drainage channels and pipes shall not be blocked, rerouted or otherwise interfered with.

(12) No new openings shall be made in building floor slabs in buildings located over Waste Materials or over soil gas noncompliance areas.

(13) Integrity of existing and future foundations shall be maintained in areas underlain by Waste Materials and in soil gas noncompliance areas. All cracks or damage in such foundations shall be reported to EPA and shall be repaired by Settling Defendant.

(14) Indoor gas controls shall not be circumvented.

(15) Indoor gas sensors or alarms shall not be turned off or interfered with.

(16) Soil gas control systems shall not be turned off or interfered with.

(17) Monitoring points, including but not limited to ground water monitoring wells, soil gas probes, reservoir leachate collection wells, soil gas vents, and survey monuments, shall not be blocked or otherwise obstructed.

(18) Monitoring wells shall not be opened; nothing shall be placed into the monitoring wells.

(19) Liquids recovery systems, liquids treatment systems, and treated liquids storage facilities shall not be turned off or interfered with.

(20) Groundwater supply or monitoring wells shall not be constructed.

(21) Settling Defendant shall disclose all land/water use restrictions to all tenants on the Property.

(22) Settling Defendant shall inform EPA of the identities of all tenants on the Property.

(23) During construction, excavation, or grading of any type, Settling Defendant shall take measures to ensure that there is no offsite migration of dust, odors or organic vapors. During such activities, Settling Defendant shall take appropriate measures to protect the health and welfare of onsite personnel and workers and to prevent offsite impacts.

(24) Settling Defendant must obtain prior written approval for all building or site modifications from EPA in accordance with Paragraph 10.b.

(25) Settling Defendant shall not excavate Waste Materials without the prior written approval of and supervision by EPA.

(26) No new construction shall occur without the prior written approval of EPA in accordance with Paragraph 10.b and the following requirements:

(a) New construction shall be supported by subsurface explorations and analytical laboratory data to characterize the construction area for the possible existence of Waste Materials.

(b) If Waste Materials are discovered in the construction area, they shall be remediated or buildings and structures must be appropriately designed to protect occupants.

(c) Appropriate worker and public health and safety precautions, including but not limited to dust control, safety plans, and other forms of worker protection, must be taken prior to approval of construction.

(27) Boreholes, foundation piles, or other subsurface penetrations into the reservoir or any other area of the site which could create conduits allowing Waste Materials to migrate to groundwater shall not be made.

(28) Construction workers shall be provided with appropriate personal protective equipment while they are working at the Site.

(29) Pesticides or herbicides shall not be applied to the capped areas of the site or to areas surrounding monitoring points.

(30) Use of any septic tanks on the property shall be discontinued and such tanks shall be decommissioned in accordance with local regulations.

(31) The property shall not be used or redeveloped for residential use; use as a hospital, school for people aged 21 and under, or day care center; or other uses by sensitive receptors.

b. If Settling Defendant seeks an exception to the land/water use restrictions in Paragraph 10.a, Settling Defendant shall obtain the prior written approval of EPA. Settling Defendant shall submit a request in writing to EPA, with all necessary supporting documentation

(such documentation may include appropriate design documents, work plans, and/or calculations). EPA shall respond to such request within a reasonable time, by: 1) providing written approval for the exception; 2) requesting further information in support of the request; 3) providing written approval of the exception with modification; or 4) denying the request. The decision of EPA shall be final and shall not be subject to the dispute resolution procedures of this Consent Decree or to judicial review.

c. If Settling Defendant constructs a new building or other permanent structure on the Property, or substantially modifies an existing building or other permanent structure on the Property, and such modification requires a City of Santa Fe Springs building or other land use permit, Settling Defendant shall implement and maintain any necessary engineered capping system(s) and any necessary engineering control(s) related to the new or modified building or other permanent structure, in conformance with the provisions of the Amended ROD and as specified by EPA. Such capping system(s) and engineering control(s) shall be implemented only with the prior written approval of EPA.

11. Environmental Restriction Covenant:

a. Settling Defendant shall, within 30 days of entry of this Consent Decree, submit to EPA for review and approval with respect to the Property:

(1) a current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the Environmental Restriction Covenant 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 Defendant is unable to obtain release or subordination of such prior liens or encumbrances).

b. Settling Defendant shall provide a copy of the Environmental Restriction Covenant to the WDIG Site Trust for execution, at an address to be provided by EPA, prior to Settling Defendant's recordation of the fully executed Environmental Restriction Covenant.

c. Within 15 days of EPA's approval and acceptance of the title evidence, Settling Defendant 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, execute and record an Environmental Restriction Covenant, in the form attached hereto as Appendix C, with the Recorder's Office of Los Angeles County. Within 30 days of recording the Environmental Restriction Covenant, Settling Defendant 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 Environmental Restriction Covenant showing the clerk's recording stamps.

d. If, after review of the final title insurance policy, or other final evidence of title, and the certified copy of the original recorded Environmental Restriction Covenant, EPA determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendant in writing of the activities that must be undertaken by Settling Defendant pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require Settling Defendant 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 Amended ROD. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree. Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution).

e. If EPA concludes, based on its review of the final title insurance policy, or other final evidence of title, and the certified copy of the original recorded Environmental Restriction Covenant, that the Work has been performed in accordance with this Consent Decree,

EPA will so certify in writing to Settling Defendant. Certification of Completion of the Work shall not affect Settling Defendant's obligations under this Consent Decree.

12. 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 Amended ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendant shall cooperate with EPA's efforts to secure such governmental controls.

13. Notwithstanding any provision of this Consent Decree, the United States retains all of its information gathering, inspection, and 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.

VII. REMEDY REVIEW

14. Periodic Review. Settling Defendant shall cooperate with the conduct of 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.

15. EPA Selection of Further Response Actions. If EPA determines, at any time, that the response actions undertaken pursuant to the Amended ROD are 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.

16. Opportunity To Comment. Settling Defendant 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.

17. Modification of the Land Use Restrictions.

a. If EPA determines that modifications or additions to the land/water use restrictions are necessary to carry out and maintain the effectiveness of the remedy set forth in the Amended ROD, EPA may require that such modifications or additions be incorporated in the land/water use restrictions, provided, however, that a modification or addition may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the Amended ROD.

b. If Settling Defendant objects to any modification or addition determined by EPA to be necessary pursuant to this Paragraph, it may seek dispute resolution pursuant to Section X (Dispute Resolution), Paragraph 26 (record review). The land/water use restrictions shall be modified in accordance with final resolution of the dispute.

c. Settling Defendant shall implement any land/water use restrictions required by any modifications or additions incorporated in the land/water use restrictions in accordance with this Paragraph.

d. 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.

VIII. REPORTING REQUIREMENTS

18. All reports and other documents submitted by Settling Defendant to EPA which purport to document Settling Defendant's compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendant.

IX. FORCE MAJEURE

19. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendant, or of any entity controlled by Settling Defendant, that delays or prevents the performance of any obligation under this Consent

Decree despite Settling Defendant's best efforts to fulfill the obligation. The requirement that the Settling Defendant 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.

20. 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 Defendant 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 five (5) days of when Settling Defendant first knew that the event might cause a delay. Within five (5) days thereafter, Settling Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendant's 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 Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendant 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 Defendant shall be deemed to know of any circumstance of which Settling Defendant, or any entity controlled by Settling Defendant knew or should have known.

21. 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 Defendant in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

22. If the Settling Defendant elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendant 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 Defendant complied with the requirements of Paragraphs 19 and 20, above. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

X. DISPUTE RESOLUTION

23. 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 Defendant that have not been disputed in accordance with this Section.

24. 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.

25. 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 Defendant invokes 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 Defendant. The Statement of Position shall specify the Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 26 or Paragraph 27.

b. Within 15 days after receipt of Settling Defendant's Statement of Position, EPA will serve on Settling Defendant 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 26 or 27. Within 10 days after receipt of EPA's Statement of Position, Settling Defendant may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendant as to whether dispute resolution should proceed under Paragraph 26 or 27, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendant ultimately appeals 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 26 and 27.

26. 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: 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 Defendant regarding the validity of the Amended ROD's provisions.

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

b. The Director of the Superfund Division, EPA Region IX, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 26.a. This decision shall be binding upon the Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 26.c and d.

c. Any administrative decision made by EPA pursuant to Paragraph 26.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendant 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 Defendant's motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant 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 26.a.

27. 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 Defendant's Statement of Position submitted pursuant to Paragraph 25, 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 Defendant unless, within 10 days of receipt of the decision, the Settling Defendant files with the Court and serves 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 Defendant's motion.

b. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

28. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendant 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 35. 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 Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XI (Stipulated Penalties).

XI. STIPULATED PENALTIES

29. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraph 30 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section IX (Force Majeure). "Compliance" by Settling Defendant shall include completion of the activities under this Consent Decree identified below in accordance with all applicable requirements of law and this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

30. Stipulated Penalty Amounts - Access and Institutional Controls.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph 30.b:

Penalty Per Violation Per Day	Period of Noncompliance
$100	1st through 14th day
$200	15th through 30th day
$500	31st day and beyond

b. Compliance Milestones.

(1) Failure to execute and record the Environmental Restriction Covenant as required by Paragraph 11.

(2) Violation of land/water use restrictions listed in Paragraph 10.a.

(3) Violation of access provisions of Paragraph 9.a.

31. 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 decision by the Director of the Superfund Division, EPA Region IX, under Paragraph 26.b or 27.a of Section X (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendant's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (2) with respect to judicial review by this Court of any dispute under Section X (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.

32. Following EPA's determination that Settling Defendant has failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendant written notification of the same and describe the noncompliance. EPA may send the Settling Defendant 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 Defendant of a violation.

33. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the Settling Defendant's receipt from EPA of a demand for payment of the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section X (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," shall be mailed to Mellon BankEPA - Region 9, Attn: Superfund Accounting, P.O. Box 360863M, Pittsburgh, PA 15251, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #09-C1, the DOJ Case Number 90-11-2-1000, and the name and address of the party making payment. Copies of checks paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XVII (Notices and Submissions), and to David Wood, Chief, Cost Accounting, U.S. EPA, Region IX, 75 Hawthorne St., San Francisco, CA 94105.

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

35. Penalties shall continue to accrue as provided in Paragraph 30 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 Defendant 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 Subparagraph c. below;

c. If the District Court's decision is appealed by any Party, Settling Defendant 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 Defendant to the extent that they prevail.

36. If Settling Defendant fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendant shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 32.

37. 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 Defendant's 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.

38. 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.

XII. COVENANTS NOT TO SUE BY PLAINTIFF

39. In consideration of the actions that will be performed by the Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 40, 41, and 43 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. With respect to future liability, these covenants not to sue shall take effect upon certification of the completion of the Remedial Action by EPA, which shall occur when Remedial Action for the Site has been completed. These covenants not to sue are conditioned upon: a) the satisfactory performance by Settling Defendant of its obligations under this Consent Decree; and b) the veracity of the information provided to EPA by Settling Defendant relating to Settling Defendant's involvement with the Site. These covenants not to sue extend only to the Settling Defendant and do not extend to any other person.

40. Plaintiff's Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant

a. to perform further response actions relating to the Site, or

b. to reimburse the United States for additional costs of response if, prior to certification of completion of the Remedial Action:

(1) conditions at the Site, previously unknown to EPA, are discovered, or

(2) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

41. Plaintiff's Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant

a. to perform further response actions relating to the Site, or

b. to reimburse the United States for additional costs of response if, subsequent to certification of completion of the Remedial Action:

(1) conditions at the Site, previously unknown to EPA, are discovered, or

(2) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

42. For purposes of Paragraph 40, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the Amended ROD was signed and set forth in the Amended Record of Decision for the Site and the administrative record supporting the Amended Record of Decision. For purposes of Paragraph 41, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of certification of completion of the Remedial Action and set forth in the Amended Record of Decision, the administrative record supporting the Amended Record of Decision, the post-Amended ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to certification of completion of the Remedial Action.

43. General reservations of rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within Plaintiff's covenants not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

a. claims based on a failure by Settling Defendant 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 for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. criminal liability;

e. liability for violations of federal or state law which occur during or after implementation of the Work; and

f. liability for the release or threat of release after the Effective Date of this Consent Decree of any Waste Material at the Site caused in whole or in part by the actions or inactions of Settling Defendant.

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

XXII. COVENANTS BY SETTLING DEFENDANT

45. Covenant Not to Sue. Subject to the reservations in Paragraph 46, Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Site 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; or

c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the California 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.

Except as provided in Paragraph 52 (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 Paragraph 43 (b) - (c), but only to the extent that Settling Defendant's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

46. The Settling Defendant reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendant's 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.

47. 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).

XIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

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

49. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree.

a. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or any other person with respect to the Site. The "matters addressed" in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Consent Decree), in the event that the United States asserts rights against Settling Defendant coming within the scope of such reservations.

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

51. The Settling Defendant also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree it will notify in writing the United States within 10 days of service of the complaint on it. In addition, Settling Defendant 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.

52. 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 Defendant 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 XII (Covenants Not to Sue by Plaintiff).

XV. ACCESS TO INFORMATION

53. Settling Defendant shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its agents relating to activities at the Site or to the implementation of this Consent Decree. Settling Defendant shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the implementation of this Consent Decree.

54. Business Confidential and Privileged Documents.

a. Settling Defendant 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 Defendant that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Settling Defendant.

b. The Settling Defendant 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 Defendant asserts such a privilege in lieu of providing documents, it shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each

addressee and recipient; (5) a description of the contents of the document, record, or information: and (6) the privilege asserted by Settling Defendant. 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.

55. 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.

XVI. RETENTION OF RECORDS

56. Until 10 years after the Settling Defendant has caused the Environmental Restriction Covenant to be recorded, as required by Paragraph 11, 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, provided, however, that Settling Defendant must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

57. At the conclusion of this document retention period, Settling Defendant 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 Defendant shall deliver any such records or documents to EPA. The Settling Defendant 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 Defendant asserts such a privilege, it 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 subject of the document, record, or information; and (6) the privilege asserted by Settling Defendant. 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.

58. 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 regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 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.

XVII. NOTICES AND SUBMISSIONS

59. 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 Party in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Defendant, 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: DOJ # 90-11-2-1000

and

Director, Superfund Division
United States Environmental Protection Agency
Region IX
75 Hawthorne St.
San Francisco, CA 94105

As to EPA:

Russell Mechem
EPA Project Coordinator
United States Environmental Protection Agency
Region IX
75 Hawthorne St.
San Francisco, CA 94105

As to the Regional Financial Management Officer:

David Wood, Chief, Cost Accounting
United States Environmental Protection Agency
Region IX
75 Hawthorne St.
San Francisco, CA 94105

As to the Settling Defendant:

Brothers Machine & Tool, Inc.
c/o Enrique, Jose and Anna Razo
9843 Greenleaf Ave.
Santa Fe Springs, CA 90670-2960

XVIII. EFFECTIVE DATE

60. 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.

XIX. RETENTION OF JURISDICTION

61. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendant 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 X (Dispute Resolution) hereof.

XX. APPENDICES

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

"Appendix A" is the Amended ROD.

"Appendix B" is the description and map of the Site.

"Appendix C" is the Environmental Restriction Covenant.

"Appendix D" is the description and map of the Property owned by Settling Defendant.

XXI. MODIFICATION

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

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

XXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

65. 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 Defendant consents to the entry of this Consent Decree without further notice.

66. 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.

XXIII. SIGNATORIES/SERVICE

67. The undersigned representative of 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.

68. 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 Defendant in writing that it no longer supports entry of the Consent Decree.

69. Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling 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. The parties agree that Settling Defendant need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XXIV. FINAL JUDGMENT

70. 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.

71. 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 Defendant. 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 23 DAY OF March, 2014

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree with the Settling Defendant Brothers Machine & Tool, Inc., on behalf of the United States, in the matter of United States v. Brothers Machine & Tool, Inc., et al., , relating to the Waste Disposal, Inc. Superfund Site.

FOR THE UNITED STATES OF AMERICA

9.3.03
Date

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

9-24-03
Date

Cheryl L Smout
Cheryl Smout
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Brothers Machine & Tool, Inc., relating to the Waste Disposal, Inc. Superfund Site.

6-16-03
Date

Keith Takata
Director, Superfund Division
U.S. Environmental Protection Agency
Region IX
75 Hawthorne St.
San Francisco, CA 94105

4/25/03
Date

Sarah E. Mueller
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
75 Hawthorne St., ORC-3
San Francisco, CA 94105

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Brothers Machine & Tool, Inc., relating to the Waste Disposal, Inc. Superfund Site.

FOR Brothers Machine & Tool, Inc.

4/2/03
Date

Signature: Jose E. Razo
Name (print): Jose E. Razo
Title: President.
Address: 9843 S. Greenleaf Ave
Sta. Fe Springs Ca. 90670

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

Name (print):
Title:
Address:

Ph. Number: