IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, and the COMMONWEALTH OF PENNSYLVANIA,	:	
Plaintiffs,	:	
v.	:	**Civil Action No. 97-1863** **Judge Conti** **Magistrate Judge Lenihan**
AK STEEL CORPORATION, *et al.*	:	
Defendants.	:	

CONSENT DECREE

SDMS DocID 512971

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REMEDIAL DESIGN/REMEDIAL ACTION CONSENT DECREE

I. BACKGROUND

A. Concurrent with the filing of this Consent Decree, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed a fourth amended complaint in this matter, ("Complaint"), pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"), 42 U.S.C. § 9607. No Settling Defendant opposes the United States' concurrent motion for leave to file its amended complaint.

B. The United States in its Complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Breslube-Penn Superfund Site in Moon Township, Pennsylvania, together with accrued interest; (2) performance of studies and response work by the defendants at the Site in accordance with the National Contingency Plan, 40 C.F.R. Part 300 (as amended); and (3) a declaratory judgment of liability for all unreimbursed response costs incurred or to be incurred by the United States that will be binding on any subsequent action or actions to recover such further response costs.

C. In accordance with the National Contingency Plan and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the Commonwealth of Pennsylvania (the "Commonwealth") on December 14, 2007, of negotiations with potentially responsible parties regarding the implementation of the Remedial Design and Remedial Action for the Site, and EPA has provided the Commonwealth with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. The Commonwealth has also filed a complaint against the Settling Defendants in this Court alleging that the Settling Defendants are liable to the Commonwealth under Section 107 of CERCLA, 42 U.S.C. § 9607.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the National Oceanic and Atmospheric Administration on December 19, 2007, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

F. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the Plaintiffs 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.

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

Register on June 17, 1996, 61 Fed. Reg. 30510.

H. In January 2000, in response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA issued an Administrative Order on Consent to a subset of Settling Defendants (i.e., CBS Corporation, Exxon Mobil Corporation, Ford Motor Company, General Motors Corporation, Hussey Copper, Ltd., and United States Steel Corporation, collectively the "Work Group"), for the performance of a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

I. The Work Group completed the Remedial Investigation ("RI") Report in August 2005, and the Work Group completed a Feasibility Study ("FS") Report on December 6, 2006 (with an addendum completed in February 2007).

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on March 30, 2007, 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.

K. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on August 30, 2007, on which the Commonwealth has given its concurrence. 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.

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

M. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the Remedial Action selected by the ROD and the Work to be performed by the Settling Performing Defendants shall constitute a response action taken or ordered by the President.

N. 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. §§ 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, including but not limited to those based on statute of limitations. 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, the Commonwealth and upon Settling Defendants and their heirs, 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 Defendants' responsibilities under this Consent Decree.

3. Settling Performing 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 Performing 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 Performing 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 Performing Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are

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

"Breslube-Penn Special Account" shall mean the special account established at the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. §9622(b)(3).

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

"Commonwealth" shall mean the Commonwealth of Pennsylvania.

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

"Contingent Remedial Action 1" shall mean the components of the remedy, as set forth in the ROD at pages 38-46, Section 12, "Selected Remedy," to be implemented to address the contamination at the Site in the event that EPA determines that the Waste Management Containment Area System (WMACS) has failed or will fail to meet Performance Standards.

"Contingent Remedial Action 2" shall mean the components of the remedy, as set forth in the ROD at pages 38-46, Section 12, "Selected Remedy," to be implemented to address the contamination at the Site in the event that EPA determines that the Enhanced Monitored Bio-attenuation (EMBA) Remedial Action failed or will fail to meet and maintain all of the EMBA Remedial Action Performance Standards.

"Contingent Remedial Action 1 and/or 2 Operation and Maintenance" shall mean all activities required to maintain the effectiveness of the Contingent Remedial Action pursuant to the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree.

"Contingent Remedial Action 1 and/or 2 Work Plan" shall mean the document developed pursuant to Paragraph 12(f) of this Consent Decree and approved by EPA, and any amendments thereto. Because these components of the remedy are contingent upon the results of whether the containment system and/or EMBA will meet Performance Standards, design efforts have been deferred until the need for these remedial components are determined in accordance with Paragraph 10 of this Consent Decree.

"Contingent Remedial Design 1 and/or 2 Work Plan" shall mean the document developed pursuant to Paragraph 12(f) of this Consent Decree and approved by EPA, and any amendments thereto.

"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.

"Duly Authorized Representative" shall mean a person set forth or designated in accordance with the procedures set forth in 40 C.F.R. § 270.11(b).

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

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

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States and/or the Commonwealth incur in connection with the Site after February 28, 2007, and February 1, 2009, respectively. Future Response Costs shall also include, (a) all Interest on those Past Response Costs Settling Defendants have agreed to reimburse under this Consent Decree which has accrued pursuant to 42 U.S.C. § 9707(a) for the United States during the period from February 28, 2007, to the date of payment, and for the Commonwealth during the period from February 1, 2009, to the date of payment, (b) all costs of the United States and the Commonwealth incurred prior to February 28, 2007, and February 1, 2009, respectively, which are not identified on the summary of costs attached hereto as Appendix A and F.

"Institutional Controls" shall mean those measures that are instituted to control the use of land, such as easements, covenants, title notices, and land use restrictions through orders from or agreements with EPA, to prevent the use of the Site in any manner that would interfere with implementation of or adversely affect the integrity or protectiveness of the selected remedy. Those institutional controls include, but are not limited to, measures to provide for worker safety and a prohibition on use of the Site for residential purposes. Institutional controls also include, but are not limited to, a prohibition on the installation and/or use of groundwater wells, unless those activities are necessary to implement the selected remedy. Those institutional controls include, but are not limited to, those controls set forth in Paragraphs 28(b) and 28(c) of this

Consent Decree, and also as set forth in Appendix B of this Consent Decree.

"Interest" shall mean interest at the rate specified for interest on investments of the 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.

"Matters Addressed" shall mean and include all response costs incurred and to be incurred by the United States with respect to the Site and all response actions taken or to be taken in connection with the Site, provided that "matters addressed" shall not include any matter as to which the United States has reserved its rights in this Consent Decree.

"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 the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree.

"PADEP" shall mean the "Pennsylvania Department of Environmental Protection" and any successor departments or agencies of the Commonwealth.

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

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

"Past Response Costs" shall mean those costs, including, but not limited to, direct and indirect costs, which the United States has paid at or in connection with the Site through February 28, 2007 and which are identified in the summary of costs attached hereto as Appendix A, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through February 28, 2007; together with all costs, including, but not limited to, direct and indirect costs, that the Commonwealth has paid at or in connection with the Site through January 31, 2009, and which are identified in the summary of costs attached hereto as Appendix F, plus Interest on all such costs which accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth on pages 39-46 of the ROD attached hereto as Appendix C and those that are developed by the Settling Performing Defendants and approved by EPA during Remedial Design.

"Plaintiffs" shall mean the United States and the Commonwealth of Pennsylvania.

"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 Site signed on August 30, 2007 and any amendments or explanation of significant differences thereto, by the Regional Administrator, EPA Region III, or his/her delegate, and all attachments thereto. The ROD is attached as Appendix C.

"Remedial Action" shall mean those activities, except for Remedial Design and Operation and Maintenance, to be undertaken by the Settling Performing Defendants to implement the ROD,

in accordance with the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

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

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

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

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

"Settling Defendants" shall mean the Parties identified in Appendix D (Settling Non-Performing Defendants) and Parties identified in Appendix E (Settling Performing Defendants), including their successors-in-interest, but only to the extent that such successor entities' liability is alleged to derive from the respective Settling Defendant's CERCLA liability for the Site.

"Settling Non-Performing Defendants" shall mean the Settling Defendants identified and so designated in Appendix D.

"Settling Performing Defendants" shall mean the Settling Defendants identified and so designated in Appendix E.

"Site" shall mean the Breslube-Penn Superfund Site, encompassing approximately 7 acres, located on both Ewing Road and at 84 Montour Road in Moon Township, Allegheny County, Pennsylvania and depicted in the ROD, and any areas to which hazardous substances deposited or

released on the 7 acre parcel have migrated.

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

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

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

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

V. GENERAL PROVISIONS

5. Objectives of the Parties

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

6. Commitments by Settling Defendants

a. Settling Performing Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Performing Defendants and approved by

EPA pursuant to this Consent Decree. Settling Performing Defendants shall also reimburse the United States and the Commonwealth for Past Response Costs and Future Response Costs as provided in this Consent Decree.

b. The obligations of Settling Performing Defendants to finance and perform the Work and to pay amounts owed the United States and the Commonwealth under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Performing Defendants to implement the requirements of this Consent Decree, the remaining Settling Performing Defendants shall complete all such requirements.

c. In the event that any of the Settling Performing Defendants files for bankruptcy or is placed involuntarily in bankruptcy proceedings, such Settling Performing Defendant shall notify the United States within three (3) days of such filing.

d. As negotiated between Settling Performing Defendants and Settling Non-Performing Defendants, the Settling Non-Performing Defendants each have agreed to pay the Settling Performing Defendants, within thirty (30) days after each of their execution of this Consent Decree, all monies necessary to satisfy any claims Settling Performing Defendants' may have under, inter alia, Sections 106, 107 or 113 of CERCLA for response actions or response costs relating to, or arising out of, the Breslube-Penn Superfund Site. Specifically, each Settling Non-Performing Defendant has agreed to pay the amount listed next to its name in Appendix D, which amounts total $4,332,421.42. Accordingly, subject to the United States' reservations of rights set forth in Section XXI (Covenants Not to Sue by Plaintiffs), the Settling Non-Performing Defendants shall have no further obligations under this Consent Decree except as otherwise

specifically set forth in this Consent Decree or in any agreement between the Settling Defendants.

7. Compliance With Applicable Law

All activities undertaken by Settling Performing Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Performing 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. 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 Performing Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

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

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

9. Notice of Obligations to Successors-in-Title

a. With respect to any property owned or controlled by any Settling Defendant(s) that is located within the Site, within fifteen (15) days after the entry of this Consent Decree, such Settling Defendant(s) shall submit to EPA and the Commonwealth for review and approval a notice to be filed with the Recorder's Office, Allegheny County, Commonwealth of Pennsylvania, 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 August 30, 2007, 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. Such Settling Defendant(s) shall record the notice(s) within ten (10) days of EPA's and the Commonwealth's approval of the notice(s). Such Settling Defendant(s) shall provide EPA and the Commonwealth with a certified copy of the recorded notice(s) within ten (10) days of recording such notice(s).

b. At least thirty (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, any 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 thirty (30) days prior to such conveyance, any Settling Defendant(s) conveying the interest shall also give written notice to EPA and the Commonwealth of the proposed conveyance, which notice shall include 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 conveying Settling Defendant's obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access and Institutional Controls, as well as to abide by such Institutional Controls, pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the conveying Settling Defendant(s). In no event shall the conveyance release or otherwise affect the liability of the conveying Settling Defendant(s) to comply with all provisions of this Consent Decree, absent the prior written consent of EPA and the Commonwealth. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTLING PERFORMING DEFENDANTS

10. Implementation of the Remedial Design and Remedial Action and, if Required by EPA, the Contingent Remedial Design and Remedial Action 1 and/or 2

a. Pursuant to the ROD and as required by the Consent Decree, Settling Performing Defendants shall perform the Remedial Design and Remedial Action and the Remedial Action Operation and Maintenance.

b. As provided in the ROD, if EPA determines, in its unreviewable discretion, that the WMACS and/or the WMACS Remedial Action Operation and Maintenance has failed or will fail to meet and maintain Performance Standards, EPA may issue a determination of remedy failure. Such determination will be in writing. EPA will notify Settling Performing Defendants in writing that they are to implement the Contingent Remedial Action 1, as set forth in the ROD and as required by this Consent Decree.

c. In the event that the Contingent Remedial Action 1 is implemented, Paragraph 12(f) shall also apply. EPA's selection of the Contingent Remedial Action 1, the components of the remedy, as set forth in the ROD at pages 38-46, Section 12, "Selected Remedy," shall not be subject to judicial review, through the dispute resolution procedures of Section XIX or otherwise.

d. Pursuant to the ROD, if within five years from the date of the ROD, performance standards have not been met nor successfully demonstrated that they will be met using EMBA technology, EPA will conduct a performance review to determine whether the EMBA Remedial Action will meet or maintain the Performance Standards. If EPA determines, in its unreviewable discretion, that the EMBA Remedial Action and/or the EMBA Remedial Action Operation and Maintenance has failed or will fail to meet and maintain the Performance Standards, EPA may issue a determination of remedy failure. Such determination shall be in writing. EPA will notify Settling Performing Defendants in writing that they are to implement the Contingent Remedial Action 2, as set forth in the ROD and as required by this Consent Decree.

e. In the event that the Contingent Remedial Action 2 is implemented, Paragraph 12(f) shall also apply. EPA's selection of the Contingent Remedial Action 2, the components of

the remedy, as set forth in the ROD at pages 38-46, Section 12, "Selected Remedy," shall not be subject to judicial review, through the dispute resolution procedures of Section XIX or otherwise.

11. Selection of Contractors.

a. Supervising Contractor.

i. All aspects of the Work to be performed by Settling Performing Defendants pursuant to Sections VI (Performance of the Work by Settling Performing 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 acceptance or disapproval by EPA. Within ten (10) days after the Effective Date of this Consent Decree, Settling Performing Defendants shall notify EPA and the Commonwealth in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. Additionally, Paragraph 12(f)(1) shall govern the time frame for such notification regarding the Supervising Contractor for the Contingent Remedial Action 1 and/or 2, if required by EPA. With respect to any contractor proposed to be Supervising Contractor, Settling Performing 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 should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice

of disapproval or acceptance of the selection of such Supervising Contractor. If at any time thereafter, Settling Performing Defendants propose to change a Supervising Contractor, Settling Performing Defendants shall give such notice to EPA and the Commonwealth and must obtain a notice of acceptance of such change from EPA, upon consultation with the Commonwealth, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

ii. If EPA disapproves the selection of a proposed Supervising Contractor, EPA will notify Settling Performing Defendants in writing. Settling Performing Defendants shall submit to EPA and the Commonwealth a list of at least three contractors, including the qualifications of each contractor, that would be acceptable to them within thirty (30) days of receipt of EPA's notice. EPA will provide written notice of the names of any contractor(s) whose selection it would accept. Settling Performing Defendants may select any contractor from that list and shall notify EPA and the Commonwealth of the name of the contractor selected within twenty-one (21) days of EPA's written notice.

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

b. <u>Other Contractors and Subcontractors</u>.

i. The Settling Performing Defendants shall submit to EPA and the

Commonwealth for acceptance by EPA the names and qualifications of any additional contractors and subcontractors they propose to use to satisfy any requirement of this Consent Decree before such contractor or subcontractor performs any Work. If EPA does not respond with a notice accepting or disapproving the proposal for additional contractors and subcontractors within fourteen (14) days of receipt by EPA of Settling Performing Defendants' selections, the proposal for additional contractors and subcontractors shall be deemed accepted. In the event EPA disapproves any proposed contractor or subcontractor, Settling Performing Defendants shall submit to EPA and the Commonwealth a list of at least three contractors or subcontractors, including the qualifications of each, that would be acceptable to them within twenty (20) days of receipt of EPA's notice. EPA will provide written notice of the names of any contractor(s) or subcontractor(s) whose selection it would accept. Settling Performing Defendants may select any contractor or subcontractor from that list and shall notify EPA and the Commonwealth of the name of the contractor or subcontractor selected within five (5) days of EPA's written notice.

12. Remedial Design/Remedial Action.

a. Within forty five (45) days after EPA's acceptance of the selection of the Supervising Contractor pursuant to Paragraph 11, Settling Performing Defendants shall submit to EPA and the Commonwealth a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan"). The RD Work Plan shall be prepared by the individual(s) and/or entity(ies) responsible for completion of the Remedial Design, except to the extent such persons have been disapproved by EPA. The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD and for achievement of the Performance

Standards and other requirements set forth in the ROD and this Consent Decree. Upon its approval by EPA, after consultation with the Commonwealth, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. The Settling Performing Defendants shall also submit to EPA and the Commonwealth, at the time the Remedial Design Work plan is submitted, a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Design Work Plan shall include plans, schedules, and methodologies for implementation of all remedial design and pre-design tasks and shall include, at a minimum:

1. a Site Management Plan;
2. a Sampling and Analysis Plan, containing:
   a. a Field Sampling Plan; and
   b. a Quality Assurance Project Plan (QAPP);
3. a Remedial Design Contingency Plan;
4. a. a Treatability Study Work Plan which includes, at a minimum, plans and schedules for the preparation and submission of a Treatability Study Evaluation Report;
   b. a Basis of Design Report, including:
      1. justification of design assumptions;
      2. a project delivery strategy;

3. remedial action permits plan for off-site permits;

4. preliminary easement/access requirements;

c. Preliminary Drawings and Specifications, including:

1. outline of general specifications;

2. preliminary schematics and drawings;

3. chemical and geotechnical data (including data from pre-design activities);

d. a value engineering screen; and

e. preliminary Remedial Action schedule.

5. plans and schedules for the preparation and submission of a Preliminary Design Submittal (the preliminary design begins with the initial design and ends with the completion of approximately 30% of the design effort) containing, at a minimum:

a. a Design Criteria Report, including:

1. project description;

2. design requirements and provisions;

3. preliminary process flow diagrams;

4. operation & maintenance requirements;

b. a Basis of Design Report, including:

1. justification of design assumptions;

2. a project delivery strategy;

3. remedial action permits plan for off-site permits;

4. preliminary easement/access requirements;

c. Preliminary Drawings and Specifications, including:

1. outline of general specifications;

2. preliminary schematics and drawings;

3. chemical and geotechnical data (including data from pre-design activities);

d. a value engineering screen; and

e. preliminary Remedial Action schedule.

6. plans and schedules for the preparation and submission of a pre-final design submittal which shall be submitted at approximately 90% of the design effort and shall address all of EPA's comments (upon consultation with the Commonwealth) to the preliminary design, and, at a minimum, additionally include:

a. a preliminary Operation & Maintenance Plan;

b. a preliminary Construction Quality Assurance Plan ("CQAP") (the CQAP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project);

c. a preliminary Remedial Action decontamination plan;

d. a draft final Remedial Action schedule;

e. a draft final Remedial Action contingency plan; and

f. a draft final Remedial Action HASP for EPA acceptance, after consultation with the Commonwealth.

7. plans and schedules for the preparation and submission of a final design submittal which shall be submitted at 100% of the design effort and shall address all of EPA's (upon consultation with the Commonwealth) comments to the pre-final design, and, at a minimum, additionally include:

a. a final Remedial Action schedule;

b. a final Remedial Action contingency plan;

c. a final Remedial Action HASP for EPA acceptance;

d. a final Remedial Action waste management plan;

e. a preliminary Remedial Action decontamination plan and a schedule for the submission of the final Remedial Action decontamination plan;

f. a final Design Criteria Report;

g. a final Remedial Action Sampling and Analysis Plan (directed at measuring progress towards meeting the Performance Standards);

h. a final Basis of Design Report;

i. final Drawings and Specifications;

j. a revised Operation & Maintenance Plan and a schedule for submission of the final Operation & Maintenance Plan;

k. a final Construction Quality Assurance Plan;

l. a final Remedial Action decontamination plan; and

m. a final project delivery strategy.

8. a Remedial Design schedule.

c. Upon approval of the Remedial Design Work Plan by EPA, upon consultation with the Commonwealth, and submittal of the Health and Safety Plan for all field activities to EPA and the Commonwealth, Settling Performing Defendants shall implement the Remedial Design Work Plan in accordance with the schedules and methodologies contained therein. The Settling Performing Defendants shall submit to EPA and the Commonwealth all plans, submittals, and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule therein for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Performing Defendants shall not commence further Remedial Design field activities at the Site prior to approval of the Remedial Design Work Plan.

d. Upon approval, approval with conditions, or modification by EPA, as provided in Section XI (EPA Approval of Plans and Other Submissions), of all components of the final design submittal, the final design submittal shall serve as the Remedial Action Work Plan and shall be

enforceable under this Consent Decree. The Settling Performing Defendants shall implement the activities required under the Remedial Action Work Plan in accordance with the schedules and methodologies contained therein.

e. The Settling Performing Defendants shall submit all plans, submittals, or other deliverables required under the Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA or required under the Remedial Design Work Plan, the Settling Performing Defendants shall not commence physical activities at the Site prior to the date for commencement set forth in the approved schedule in the Remedial Action Work Plan.

f. Contingent Remedial Design/Contingent Remedial Action, if Required By EPA

1. Within fifteen (15) days after Settling Performing Defendants' receipt of EPA's notification of Remedial Action failure and to perform the Contingent Remedial Action 1 and/or 2, pursuant to Paragraph 10 above, Settling Performing Defendants shall notify EPA and the Commonwealth in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor for the Contingent Remedial Action 1 and/or 2 pursuant to Paragraph 11 above.

2. Settling Performing Defendants shall submit an amendment to the Remedial Design Work Plan to implement the Contingent Remedial Action 1 and/or 2 pursuant to Paragraph 12(a). above.

3. The Amendment to the Remedial Design Work Plan to implement the

Contingent Remedial Action 1 and/or 2 shall include all items in Paragraph 12(b) above and be implemented pursuant to the provisions in Paragraph (12)(c)-(e).

13. Each and every Section of this Consent Decree shall apply to the Remedial Action and to the Contingent Remedial Action 1 and/or 2, if EPA determines that the Contingent Remedial Action 1 and/or 2 should be implemented under the terms of this Consent Decree and the ROD.

14. Resident Engineer. Following EPA approval, approval with conditions, or modification by EPA, as provided in Section XI (EPA Approval of Plans and Other Submissions), of all components of the final design submittal, and prior to commencement of any on-Site Work under the Remedial Action Work Plan and, if required by EPA, the Contingent Remedial Action Work Plan 1 and/or 2, the Settling Performing Defendants shall submit to EPA and the Commonwealth the name and qualifications of a Resident Engineer to be present at the Site during construction to ensure that the Work is performed in accordance with the approved Remedial Action Work Plan and, if required by EPA, the Contingent Remedial Action Work Plan 1 and/or 2. The Resident Engineer shall be familiar with all aspects of the Remedial Design approved by EPA. EPA retains the right to disapprove the use of any Resident Engineer proposed by Settling Performing Defendants. In the event EPA disapproves the use of any proposed Resident Engineer, Settling Performing Defendants shall submit to EPA and the Commonwealth a list of at least three replacements, including the qualifications of each, who would be acceptable to them within fifteen (15) days of receipt of EPA's notice. EPA will provide written notice of the names of any replacements whose use it would accept. Settling Performing Defendants may select any replacement from the EPA notice and shall notify EPA and the Commonwealth of the name of the

replacement selected within ten (10) days of EPA's written notice. Settling Performing Defendants shall ensure that the Resident Engineer performs on-Site inspections as necessary to ensure compliance with the approved Remedial Action Work Plan and, if required by EPA, the Contingent Remedial Action Work Plan 1 and/or 2 and that the results of such inspections are promptly provided to Settling Performing Defendants, EPA, and the Commonwealth. The Resident Engineer may act as the QA Official.

15. The Settling Performing Defendants shall continue to implement the Remedial Action and O & M and, if required by EPA, the Contingent Remedial Action 1 and/or 2 and Contingent Remedial Action Operation & Maintenance 1 and/or 2, until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

16. Modification of the Work.

a. If EPA determines that modification of the Work is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may (1) require that such modification be incorporated into the Remedial Design Work Plan, Remedial Action Work Plan, Operation and Maintenance Plan, and, if required by EPA, the Contingent Remedial Action Work Plan 1 and/or 2 and the Contingent Operation & Maintenance Plan 1 and/or 2 and/or any other plan relating to such Work, and/or (2) require that Settling Performing Defendants submit a plan for EPA approval, upon consultation with the Commonwealth, which incorporates such modification to the Work and implement such approved plan. Provided, however, that a modification may be required pursuant to this Paragraph only to the extent that it is consistent with the scope of the remedy selected in the ROD.

b. For the purposes of this Paragraph 16 and Paragraphs 53 and 54 only, the "scope of the remedy selected in the ROD" means:

i. tasks employing a technology or combination of technologies discussed in Section 12.0 of the ROD, including the Performance Standards set forth in Section 12.2, to achieve and maintain the objectives described in the ROD. The technologies discussed in Section 12.0 of the ROD include:

a. excavation of off-facility and on-facility [outside the Waste Management Area ("WMA")] contaminated soils;

b. a RCRA-modified cap over the WMA and a vertical slurry wall containment system around the perimeter of the WMA;

c. a product recovery disposal system to remove floating and collectible Light Non-aqueous Phase Liquid from the soil and surface of the groundwater table.

d. Enhancement of in-situ bioremediation through injection of reagents to reduce concentrations of VOCs in groundwater outside the WMA to performance standards.

e. The contingency technology for the groundwater both within and outside the WMA area is extraction and treatment of groundwater.

ii tasks associated with monitoring of Site conditions and the effectiveness of the Remedial Action.

iii implementation of institutional controls, as defined herein.

c. If Settling Performing Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 71 (record review). The Remedial Design Work Plan, Remedial Action Work Plan, Operation and Maintenance Plan, and, if required by EPA, the Contingent Remedial Action Work Plan1 and/or 2 and Contingent Operation and Maintenance Plan 1 and/or 2 and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Settling Performing Defendants shall implement any work required by any modifications incorporated in the Remedial Design Work Plan, Remedial Action Work Plan, Operation and Maintenance Plan, and, if required by EPA, the Contingent Remedial Action Work Plan1 and/or 2 and Contingent Operation & Maintenance Plan 1 and/or 2 and/or in work plans developed in accordance with this Paragraph.

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

17. Settling Performing Defendants acknowledge and agree that nothing in this Consent Decree or the Remedial Design/Remedial Action Work Plans and, if required by EPA, the Contingent Remedial Action Work Plan 1 and/or 2 constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the Work Plans will achieve the Performance Standards.

18. Settling Performing Defendants shall, prior to any off-Site shipment of Waste Material from the Site to a waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA and the Commonwealth's Project Coordinators of such shipment of Waste Material. However, as to EPA, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards.

a. The Settling Performing 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 Performing Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Settling Performing Defendants following the award of the contract for Remedial Action construction. The Settling Performing Defendants shall provide the information required by Paragraph 18(a) as soon as practicable after the award of the contract but in no case less than seven (7) days before the Waste Material is actually shipped.

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

19. Periodic Review. Settling Performing Defendants shall conduct any studies and investigations of the Site 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 (5) years as required by Section 121(c) of CERCLA and any applicable regulations.

20. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action or, if required by EPA, the Contingent Remedial Action 1 and/or 2 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.

21. Opportunity To Comment. Settling Performing 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.

22. Settling Performing Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, the Settling Performing Defendants shall

undertake such further response actions to the extent that the reopener conditions in Paragraph 86 or Paragraph 87 (United States' reservations of liability based on unknown conditions or new information) are satisfied. If EPA requires Settling Performing Defendants to undertake such further actions pursuant to this Paragraph, Settling Performing Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 86 or Paragraph 87 of Section XXI (Covenants Not To Sue by Plaintiffs) are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 71 (record review).

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

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

24. While conducting all sample collection and analysis activities required by this Consent Decree, the Settling Performing Defendants shall implement quality assurance, quality control, and chain of custody procedures in accordance with "EPA Requirements for Quality Assurance Project Plans (EPA QA/R-5)"(EPA 240 B-01 003, March 2001); "EPA NEIC Policies and Procedures Manual," (May 1986) (EPA 330/978-001-R); National Functional Guidelines for Inorganic Data

Review (OSWER 9240, 1-45 EPA 540/R-04-00 October 2004) and Modifications to the National Functional Guidelines for Inorganic Data Review (EPA Region III: April 1993); National Functional Guidelines for Organic Data Review (EPA 540/R-07-003, July 2007) and Modifications to the National Functional Guidelines for Organic Data Review (EPA Region III: September 1994); "Region III Innovative Approaches to Data Validation," (EPA Region III: September 1995); "Data Quality Objectives Process for Superfund," (EPA 540/R-93/071: September 1994); "Uniform Federal Policy for Quality Assurance Project Plans", (EPA 505 B-04-900A, March 2005), and subsequent amendments to such guidelines upon notification by EPA to Settling Performing 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 Performing Defendants shall submit to EPA for approval, upon consultation with the Commonwealth, a Quality Assurance Project Plan ("QAPP") for the Work that is consistent with the NCP and the guidance documents cited above. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Performing Defendants shall ensure that EPA and Commonwealth personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Performing Defendants in implementing this Consent Decree. In addition, Settling Performing Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Performing 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. Settling Performing Defendants shall submit to EPA the selected laboratory's(ies') Quality Assurance Program Plan and their qualifications, which shall include, at a minimum, previous certifications, Performance Evaluation (PE) results, equipment lists and personnel resumes. Settling Performing 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. At the request of EPA, Settling Performing Defendants shall conduct one or more audits of the selected laboratory(ies) to verify analytical capability and compliance with the QAPP. Auditors shall conduct lab audits during the time the laboratory(ies) is analyzing samples collected pursuant to this Consent Decree. The lab audit shall be conducted according to procedures available from the QA Branch. Audit reports shall be submitted to the EPA Project Coordinator within fifteen (15) days of completion of the audit. The Settling Performing Defendants shall report serious deficiencies, including all those which adversely impact data quality, reliability or accuracy, and take action to correct such deficiencies within twenty-four (24) hours of the time the Settling Performing Defendants knew or should have known of the deficiency.

25. Upon request, the Settling Performing Defendants shall allow split or duplicate samples to be taken by EPA and the Commonwealth or their authorized representatives. Settling Performing Defendants shall notify EPA and the Commonwealth not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the Commonwealth shall have the right to take any additional samples that EPA deems necessary.

Upon request, EPA and the Commonwealth shall allow the Settling Performing Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiffs' oversight of the Settling Performing Defendants' implementation of the Work.

26. Settling Performing Defendants shall submit to EPA five (5) copies, in paper and electronic form, and to the Commonwealth two (2) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Performing Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

27. Notwithstanding any provision of this Consent Decree, the United States and the Commonwealth 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

28. 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 any of the Settling Defendants, such Settling Defendants shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States, the Commonwealth and their 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:

i. Monitoring the Work;

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

iii. Conducting investigations relating to contamination at or near the Site;

iv. Obtaining samples;

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

vi. Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;

vii. Implementing the Work pursuant to the conditions set forth in Paragraph 90 of this Consent Decree (Work Takeover);

viii. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Performing Defendants or their agents, consistent with Section XXIV;

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

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

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, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such restrictions include, but are not limited to, preventing the extraction of ground water for potable and/or non-potable uses, and inhibiting access to the Waste Management

Area; and

c. If EPA so requests, execute and record in the Recorder's Office of Allegheny County, Commonwealth of Pennsylvania, an 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 28(a) of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 28(b) of this Consent Decree, or other restrictions that EPA and the Commonwealth determine are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Performing Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to one or more of the following persons, as determined by EPA (i) the United States, on behalf of EPA, and its representatives, (ii) the Commonwealth and its representatives, (iii) the other Settling Performing Defendants and their representatives, and/or (iv) other appropriate grantees. Such Settling Performing Defendants shall, within forty-five (45) days of entry of this Consent Decree, submit to EPA and the Commonwealth for review and approval with respect to such property:

(1) A draft easement, in substantially the form attached hereto as Appendix B, that is enforceable under the laws of the Commonwealth of Pennsylvania, including the Uniform Environmental Covenants Act; 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 Performing Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

Within fifteen (15) days of EPA's approval upon consultation with the Commonwealth and acceptance of the easement and the title evidence, such Settling Performing 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 Allegheny County. Within thirty (30) days of recording the easement, such Settling Performing Defendants shall provide EPA and the Commonwealth with a final title insurance policy, or other final evidence of title acceptable to EPA and the Commonwealth, 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.

29. 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 any of the Settling Performing Defendants, Settling Performing Defendants shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Settling Performing Defendants, as well as for the United States on behalf of EPA, and the Commonwealth, 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 28(a) of this Consent Decree;

b. an agreement, enforceable by the Settling Performing Defendants and the United

States and the Commonwealth, to 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 to be performed pursuant to this Consent Decree. Such restrictions include, but are not limited to extracting ground water for potable and/or non-potable uses, and inhibiting access to the source area; and

c. If EPA or the Commonwealth requests, the execution and recordation in the Recorder's Office of Allegheny County, Commonwealth of Pennsylvania, of an 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 28(a) of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 28(b) 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 one or more of the following persons, as determined by EPA (i) the United States, on behalf of EPA, and its representatives, (ii) the Commonwealth and its representatives, (iii) the other Settling Performing Defendants and their representatives, and/or (iv) other appropriate grantees. Within forty-five (45) days of entry of this Consent Decree, Settling Performing Defendants shall submit to EPA for review and approval upon consultation with the Commonwealth with respect to such property:

(1) A draft easement, in substantially the form attached hereto as Appendix B, that is enforceable under the laws of the Commonwealth of Pennsylvania; 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 Performing Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

Within fifteen (15) days of EPA's approval and acceptance upon consultation with the Commonwealth of the easement and the title evidence, such Settling Performing 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 Allegheny County. Within thirty (30) days of recording the easement, such Settling Performing Defendants shall provide EPA and the Commonwealth with a final title insurance policy, or other final evidence of title acceptable to EPA and the Commonwealth, 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.

30. For purposes of Paragraph 29 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. Notwithstanding the foregoing, the term "best efforts" shall not require the payment of any sums of money to any of the current or past owners and operators of the Site. If (a) any access or land/water use restriction agreements required by Paragraphs 29(a) or 29(b) of this

Consent Decree are not obtained within forty-five (45) days of the date of entry of this Consent Decree, (b) any access easements or restrictive easements required by Paragraph 29(c) of this Consent Decree are not submitted to EPA and the Commonwealth in draft form within forty-five (45) days of the date of entry of this Consent Decree, or (c) Settling Performing Defendants are unable to obtain an agreement pursuant to Paragraph 28(c)(1) or Paragraph 29(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 forty-five (45) days of the date of entry of this Consent Decree, Settling Performing Defendants shall promptly notify the United States and the Commonwealth in writing, and shall include in that notification a summary of the steps that Settling Performing Defendants have taken to attempt to comply with Paragraph 29 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Performing 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 Performing Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Payments for Response Costs), 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.

31. If EPA, either individually or after consultation with the Commonwealth, determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other

governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Performing Defendants shall cooperate with EPA and the Commonwealth's efforts to secure such governmental controls.

32. Notwithstanding any provision of this Consent Decree, the United States and the Commonwealth retain 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

33. In addition to any other requirement of this Consent Decree, Settling Performing Defendants shall submit to EPA five (5) copies, in paper and electronic form, and to the Commonwealth three (3) copies of written monthly progress reports, along with an electronic version of each, 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 Performing 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 Performing Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Performing Defendants shall submit these progress reports to EPA and the Commonwealth by the tenth day of every month following the Effective Date of this Consent Decree until EPA notifies the Settling Performing Defendants pursuant to Paragraph 54(b) of Section XIV (Certification of Completion). If requested by EPA, Settling Performing Defendants shall also provide briefings for EPA and the Commonwealth to discuss the progress of the Work.

34. The Settling Performing Defendants shall notify EPA and the Commonwealth of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, implementation of work plans, no later than seven (7) days prior to the performance of the activity. Notwithstanding the foregoing, the Settling Performing Defendants shall notify EPA and the Commonwealth of any change in the schedule described in the monthly progress reports for the performance of data collection no later than thirty (30) days prior to the performance of such activity.

35. Upon the occurrence of any event during performance of the Work that Settling Performing 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 Performing Defendants shall within twenty-four (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 EPA Region III Hotline at (215) 814-3255, as well as the Project Coordinator or, if unavailable, Alternate Project Coordinator for the Commonwealth, at (412) 442-4000. These reporting requirements are in addition to the reporting required by CERCLA § 103 or EPCRA § 304.

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

37. Settling Performing Defendants shall submit 4 (four) copies of all plans, reports, and data required by the Remedial Design Work Plan, the Remedial Action Work Plan, Contingent Remedial Design/Contingent Remedial Action Work Plan 1 and/or 2 or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Performing Defendants shall simultaneously submit 3 (three) copies of all such plans, reports, and data to the Commonwealth. Upon request by EPA, Settling Performing Defendants shall submit in electronic form all portions of any report or other deliverable Settling Performing Defendants are required to submit pursuant to the provisions of this Consent Decree.

38. All reports and other documents submitted by Settling Performing Defendants to EPA

(other than the monthly progress reports referred to above) which purport to document Settling Performing Defendants' compliance with the terms of this Consent Decree shall be signed by a Duly Authorized Representative of the Settling Performing Defendants.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

39. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, upon consultation with the Commonwealth, 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 Performing Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Performing Defendants at least one notice of deficiency and an opportunity to cure within fourteen (14) days, or such other time as specified by EPA in such notice, except where to do so would cause serious disruption to the Work, or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate to EPA a bad faith lack of effort to submit an acceptable deliverable.

40. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 39(a), (b), or (c), Settling Performing Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 39(c) and the submission has a material

defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

41. a. Upon receipt of a notice of disapproval pursuant to Paragraph 39(d), Settling Performing Defendants shall, within fourteen (14) days, or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the fourteen (14)-day period, or otherwise specified period, but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 42 and 43.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 39(d), Settling Performing 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 Performing Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

42. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Performing 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 Performing Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute Resolution).

43. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to

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

44. 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

45. The EPA and Commonwealth Project Coordinators and Alternate Project Coordinators for this Site are:

EPA Project Coordinator:
Bhupendra Khona (3HS22)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103
(215) 814-3213 (phone)
(215) 814-3002 (telefax)

EPA Alternate Project Coordinator:
Linda Dietz (3HS22)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103
(215) 814-3195 (phone)
(215) 814-3002 (telefax)

Commonwealth Project Coordinator:
Dawna Saunders
Pennsylvania Department of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA 15222-4745
(412) 442-4000 (phone)
(412) 442-4194 (telefax)

Commonwealth Alternate Project Coordinator:
Barbara Gunter
Pennsylvania Department of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA 15222-4745
(412) 442-4000 (phone)
(412) 442-4194 (telefax)

Within twenty (20) days of the Effective Date of this Consent Decree, Settling Performing Defendants will notify EPA and the Commonwealth, in writing, of the name, address and telephone number of their designated Project Coordinator(s) and Alternate Project Coordinator(s). If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Performing Defendants' Project Coordinator and Alternate Project Coordinator shall be subject to acceptance or disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Performing Defendants' Project

Coordinator and Alternate Project Coordinator shall not be an attorney for any of the Settling Performing Defendants in this matter. The Settling Performing Defendants' Project Coordinator and Alternate Project Coordinator may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

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

47. EPA's Project Coordinator and the Commonwealth's Project Coordinator and the Settling Performing Defendants' Project Coordinator will meet or confer by phone, at a minimum, on a monthly basis.

XIII. PERFORMANCE GUARANTEE

48. In order to ensure the full and final completion of the Work, Settling Performing

Defendants shall establish and maintain a Performance Guarantee for the benefit of EPA in an amount equal to the "Estimated Cost of the Work," which initially shall be $8,070,000. The Performance Guarantee, which must be satisfactory in form and substance to EPA, shall be in one or more of the following mechanisms (provided that, if Settling Performing Defendants intend to use multiple mechanisms, such multiple mechanisms shall be limited to trust funds, surety bonds and letters of credit):

a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;

d. A demonstration by one Settling Performing Defendant that such Settling Performing Defendant meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied; or

e. A written guarantee to fund or perform the Work executed in favor of EPA by

one of the following: (i) a direct or indirect parent company of a Settling Performing Defendant, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with at least one Settling Performing Defendant; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it meets the requirements for owners and operators in subparagraphs (1) through (3) and (5) through (8) of 40 C.F.R. §264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder. Within ten days after the Effective Date, Settling Performing Defendants shall execute or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents attached hereto as Appendix G, and such Performance Guarantee(s) shall thereupon be fully effective. Within 30 days of the Effective Date, Settling Performing Defendants shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to EPA and the United States in accordance with Section XXVI (Notices and Submissions), with a copy to the Chief, Cost Recovery Branch for EPA Region III.

49. If at any time during the effective period of this Consent Decree, Settling Performing Defendants provide a Performance Guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraphs 48(d) or 48(e), the relevant Settling Performing Defendants shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), relating to these methods unless otherwise provided in this Consent Decree, including but not limited to (i) the initial submission of required financial reports and statements from the relevant

entity's chief financial officer and independent certified public accountant; (ii) the annual re-submission of such reports and statements within 90 days after the close of each such entity's fiscal year; and (iii) the notification of EPA within 90 days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). Solely for purposes of the Performance Guarantee mechanisms specified in this Section XIII, references in 40 C.F.R. Part 264, Subpart H, to: "closure," "post-closure," and "plugging and abandonment" shall be deemed to include the Work required under this Consent Decree; "current closure cost estimate," "current post closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to include all the dollar amounts described in paragraphs 1-4 of the "Model CFO Letter," attached hereto as Appendix H; "owner" and "operator" shall be deemed to refer to the Settling Defendant making a demonstration under Paragraph 48(d); "facility" and "hazardous waste facility" shall be deemed to include the Site; and a letter required by 40 C.F.R. § 264.151(f) shall be deemed to refer to a letter in the form attached hereto as Appendix H.

50. In the event that EPA determines at any time that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that any Settling Performing Defendant becomes aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Settling Performing

Defendants, within 30 days of receipt of notice of EPA's determination or, as the case may be, within 30 days of any Settling Performing Defendant becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of Performance Guarantee listed in Paragraph 48 that satisfies all requirements set forth in this Section XIII. In seeking approval for a revised or alternative form of Performance Guarantee, Settling Performing Defendants shall follow the procedures set forth in Paragraph 52(b)(2). Settling Performing Defendants' inability to post a Performance Guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Settling Performing Defendants to complete the Work in strict accordance with the terms hereof.

51. The commencement of any Work Takeover pursuant to Paragraph 90 shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to Paragraphs 48(a), 48(b), 48(c), or 48(e), and at such time EPA shall have immediate access to resources guaranteed under any such Performance Guarantee(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 Performance Guarantee(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 Performance Guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 48(d), Settling Performing Defendants 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. In addition, if at any time EPA is notified by the issuer of a Performance Guarantee that such issuer intends to cancel the Performance Guarantee mechanism it has issued, then, unless Settling Performing Defendants provide a substitute Performance Guarantee mechanism in accordance with this Section XIII no later than 30 days prior to the impending cancellation date, EPA shall be entitled (as of and after the date that is 30 days prior to the impending cancellation) to draw fully on the funds guaranteed under the then-existing Performance Guarantee.

52. Modification of Amount and/or Form of Performance Guarantee.

a. Reduction of Amount of Performance Guarantee. If Settling Performing Defendants believe that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 48, Settling Performing Defendants may, on any anniversary of the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the Performance Guarantee provided pursuant to this Section so that the amount of the Performance Guarantee is equal to the estimated cost of the remaining Work to be performed. Settling Performing Defendants shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval for a revised or alternative form of Performance Guarantee, Settling Performing Defendants shall follow the procedures set forth in Paragraph 52(b)(2). If EPA decides to accept such a proposal, EPA shall notify the petitioning Settling Performing Defendants of such decision in writing. After receiving EPA's written

acceptance, Settling Performing Defendants may reduce the amount of the Performance Guarantee in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, Settling Performing Defendants may reduce the amount of the Performance Guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XIX (Dispute Resolution). No change to the form or terms of any Performance Guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 49 or 52(b).

b. Change of Form of Performance Guarantee.

(1) If, after the Effective Date, Settling Performing Defendants desire to change the form or terms of any Performance Guarantee(s) provided pursuant to this Section, Settling Performing Defendants may, on any anniversary of the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form of the Performance Guarantee provided hereunder. The submission of such proposed revised or alternative form of Performance Guarantee shall be as provided in Paragraph 52(b)(2). Any decision made by EPA on a petition submitted under this Paragraph shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Settling Performing Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

(2) Settling Performing Defendants shall submit a written proposal for a revised or alternative form of Performance Guarantee to EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of Performance Guarantee, including all proposed

instruments or other documents required in order to make the proposed Performance Guarantee legally binding. The proposed revised or alternative form of Performance Guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Settling Performing Defendants shall submit such proposed revised or alternative form of Performance Guarantee to EPA and the United States in accordance with Section XXVI ("Notices and Submissions"), with a copy to the Chief, Cost Recovery Branch for EPA Region III. EPA shall notify Settling Performing Defendants in writing of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this Paragraph. Upon EPA's acceptance of Settling Performing Defendants' proposal for a revised or alternative Performance Guarantee, the Estimated Cost of the Work shall be deemed to be the estimated cost of the remaining Work set forth in Settling Performing Defendants' approved proposal. Within ten days after receiving a written decision approving the proposed revised or alternative Performance Guarantee, Settling Performing Defendants shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such Performance Guarantee(s) shall thereupon be fully effective. Settling Performing Defendants shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding within 30 days of receiving a written decision approving the proposed revised or alternative Performance Guarantee to EPA and the United States in accordance with Section XXVI ("Notices and Submissions"), with a copy to the Chief, Cost Recovery Branch for EPA Region III.

c. Release of Performance Guarantee. If Settling Performing Defendants receive written notice from EPA in accordance with Paragraph 53 that the Work has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies Settling Performing Defendants in writing, Settling Performing Defendants may thereafter release, cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section. Settling Performing Defendants shall not release, cancel, or discontinue any Performance Guarantee provided pursuant to this Section except as provided in this Paragraph. In the event of a dispute, Settling Performing Defendants may release, cancel, or discontinue the Performance Guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XIX (Dispute Resolution).

d. Contingent Remedy. In the event that EPA provides written notice pursuant to Paragraph 10(b) or 10(d) above that Settling Performing Defendants are to implement Contingent Remedial Action 1 and/or 2, then, within thirty (30) days of receipt of any such notice, Settling Performing Defendants shall obtain and present to EPA for approval a proposal for a revised or alternative form of Performance Guarantee listed in Paragraph 48 that satisfies all requirements set forth in this Section XIII. In seeking approval for a revised or alternative form of Performance Guarantee, Settling Performing Defendants shall follow the procedures set forth in Paragraph 52(b)(2). Settling Performing Defendants' inability to post a Performance Guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Settling Performing Defendants to complete the Work in strict accordance with the terms hereof.

XIV. CERTIFICATION OF COMPLETION

53. Completion of the Remedial Action

a. Within ninety (90) days after Settling Performing Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Performing Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Performing Defendants, EPA and the Commonwealth. If, after the pre-certification inspection, the Settling Performing Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the Commonwealth, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within thirty (30) days of the inspection. In the report, a registered professional engineer and the Settling Performing Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a Duly Authorized Representative of a Settling Performing Defendant or the Settling Performing Defendants' Project Coordinator:

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, upon consultation with the Commonwealth, determines that the Remedial Action or any

portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Performing Defendants in writing of the activities that must be undertaken by Settling Performing Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards. Provided, however, that EPA may only require Settling Performing Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 16(b). EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree or require the Settling Performing Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Performing Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and upon consultation with the Commonwealth, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree.

54. Completion of the Work

a. Within ninety (90) days after Settling Performing Defendants conclude that all phases of the Work (including O & M), have been fully performed, Settling Performing Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Performing Defendants, EPA and the Commonwealth. If, after the pre-certification inspection, the Settling Performing Defendants still believe that the Work has been fully performed, Settling Performing Defendants shall submit to EPA and the Commonwealth 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 Duly Authorized Representative of a Settling Performing Defendant or the Settling Performing 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 determines, upon consultation with the Commonwealth, that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Performing Defendants in writing of the activities that must be undertaken by Settling Performing Defendants pursuant to this Consent Decree to complete the Work. Provided, however, that EPA may only require Settling Performing Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the"scope of the remedy selected in the ROD," as that term is defined in Paragraph 16(b). EPA will set forth in the

notice a schedule for performance of such activities consistent with the Consent Decree or require the Settling Performing Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Performing Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Performing Defendants and upon consultation with the Commonwealth, that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in writing.

XV. EMERGENCY RESPONSE

55. 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 Performing Defendants shall, subject to Paragraph 56, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify EPA's and the Commonwealth's Project Coordinators, and, if the Project Coordinators are unavailable, EPA's and the Commonwealth's Alternate Project Coordinators. In the event both of EPA's designated representatives are unavailable, the Settling Performing Defendants shall notify the EPA Region III Hotline at (215) 814-3255. Settling Performing 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 this Consent Decree. In the event that Settling Performing Defendants fail to take appropriate response action as required by this Section, and EPA and/or the Commonwealth takes such action instead, Settling Performing Defendants shall reimburse EPA and/or the Commonwealth all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs).

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

XVI. PAYMENTS FOR RESPONSE COSTS

57. Payments for Past Response Costs.

a. EPA has determined that Settling Defendants are entitled to Orphan Share consideration, as that term is defined in EPA's Interim Guidance for Settlors of Remedial Design/Remedial Action and Non-Time Critical Removals in the amount of $1,613,234.72. Within thirty (30) days of the Effective Date, Settling Performing Defendants shall pay to EPA, on behalf of all Settling Defendants, Past Response Costs in the amount of $3,037,491.61 in payment for the remainder of EPA's 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 1997V01636, EPA Site/Spill ID No. 03BD, and DOJ Case Number DJ#90-11-3-1762. Payment shall be made in accordance with instructions provided to the Settling Performing Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Western District of Pennsylvania 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. Settling Performing Defendants shall send notice that such payment has been made to the United States as specified in Section XXVI (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. At the time of payment, Settling Performing Defendants shall send copies of the check(s) to the United States as specified in Section XXVI (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. The total amount to be paid by Setting Defendants pursuant to Subparagraph shall be deposited in the Breslube-Penn 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.

b. Within thirty (30) days of the Effective Date, Settling Performing Defendants shall pay to the Commonwealth $41,356.04, on behalf of all Settling Defendants, in the form of a certified or cashier's check or checks made payable to the Commonwealth of Pennsylvania, in reimbursement of the Commonwealth's Past Response Costs. The Settling Performing Defendants

shall send the certified or cashier's check to Dawna Saunders, Project Manager, Environmental Cleanup Program, Pennsylvania Department of Environmental Protection, Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. The check and an accompanying cover letter shall specify the name of the site, its location and that the costs are being reimbursed pursuant to this Consent Decree.

c. As negotiated and memorialized in a written agreement between Settling Performing Defendants and Settling Non-Performing Defendants, each Settling Non-Performing Defendant shall pay to Settling Performing Defendants, within thirty (30) days after their individual execution of this Consent Decree, all monies necessary to satisfy any claims Settling Performing Defendants may have under, inter alia, Sections 106, 107 or 113 of CERCLA for response actions or response costs pursuant to this Consent Decree. Specifically, each Settling Non-Performing Defendant has agreed to pay the amount listed next to its name in Appendix D, which amounts total $4,332,421.42. In the event a Settling Non-Performing Defendant fails to make timely payment under this Paragraph 57, such Settling Non-Performing Defendant shall pay Interest on the unpaid balance to Settling Performing Defendants, or as provided under a separate agreement between the Settling Non-Performing Defendants and the Settling Performing Defendants.

58. Payments for Future Response Costs.

a. Settling Performing Defendants shall pay to EPA all Future Response Costs not inconsistent with the National Contingency Plan. On a periodic basis, the United States will send Settling Performing Defendants a bill requiring payment that includes a cost summary, setting forth

direct and indirect costs incurred by EPA, DOJ, and their contractors. Settling Performing Defendants shall make all payments within forty five (45) days of Settling Performing Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 59. Settling Performing Defendants shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," and referencing the name and address of the party making the payment, EPA Site/Spill ID No. 03BD, and DOJ Case Number DJ#90-11-3-1762. Settling Performing Defendants shall send the check(s) to United States Environmental Protection Agency, Superfund Payments, Cincinnati Finance Center, P.O. Box 979076, St. Louis, MO 63197-9000, and shall send copies of the check(s) to the United States as specified in Section XXVI (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. The total amount to be paid by Setting Performing Defendants pursuant to Subparagraph 58 shall be deposited in the Breslube-Penn 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.

b. Settling Performing Defendants shall reimburse the Commonwealth for all of the Commonwealth's Future Response Costs not inconsistent with the National Contingency Plan. The Commonwealth will send Settling Performing Defendants a bill requiring payment that includes a cost summary on a periodic basis. Settling Performing Defendants shall make all payments within thirty (30) days of Settling Performing Defendants' receipt of each bill requiring

payment, except as otherwise provided in this Paragraph. The Settling Performing Defendants shall make all payments to the Commonwealth required by this Paragraph in the manner described in Paragraph 57.b.

59. Settling Performing Defendants may contest payment of any Future Response Costs under Paragraph 58 if they determine that the United States or the Commonwealth 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 (if the United State's accounting is being disputed) or the Commonwealth (if the Commonwealth's accounting is being disputed) pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Performing Defendants shall within the 30 day period pay all uncontested Future Response Costs to the United States or the Commonwealth in the manner described in Paragraph 58. Simultaneously, the Settling Performing Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the Commonwealth of Pennsylvania and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Performing Defendants shall send to the United States, as provided in Section XXVI (Notices and Submissions) and the Commonwealth, 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 Performing Defendants shall initiate the dispute resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Performing Defendants shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 58. If the Settling Performing Defendants prevail concerning any aspect of the contested costs, the Settling Performing 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 58; Settling Performing 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 XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Performing Defendants' obligation to reimburse the United States and the Commonwealth for their Future Response Costs.

60. In the event that the payments required by Subparagraph 57 are not made within thirty (30) days of the Effective Date or the payments required by Paragraph 58 are not made within thirty (30) days of the Settling Performing Defendants' receipt of the bill, Settling Performing Defendants shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs and Commonwealth Past Response Costs under this Paragraph 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 Performing 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 Performing Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 75. The Settling Performing Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 58.

XVII. INDEMNIFICATION AND INSURANCE

61. a. The United States and the Commonwealth do not assume any liability by entering into this agreement or by virtue of any designation of Settling Performing Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Performing Defendants shall indemnify, save, and hold harmless the United States, the Commonwealth and their 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 Performing 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 Performing Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Performing Defendants agree to pay the United States and the Commonwealth all costs they incur 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 or the Commonwealth based on negligent or other wrongful acts or omissions of Settling Performing 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. Neither the United States nor the Commonwealth shall be held out as a party to any contract entered into by or on behalf of Settling Performing Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Performing Defendants nor any such contractor shall be considered an agent of the United States or the Commonwealth.

b. The United States and the Commonwealth shall give Settling Performing Defendants notice of any claim for which the United States and/or the Commonwealth plan to seek indemnification for pursuant to Paragraph 61(a), and shall consult with Settling Performing Defendants prior to settling such claim.

62. Settling Performing Defendants waive all claims against the United States and the Commonwealth for damages or reimbursement or for set-off of any payments made or to be made to the United States or the Commonwealth, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Performing 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 Performing Defendants shall indemnify and hold harmless the United States and the Commonwealth with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Performing 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.

63. No later than fifteen (15) days before commencing any on-site Work, Settling Performing Defendants shall secure, and shall maintain until the first anniversary of EPA's

Certification of Completion of the Remedial Action pursuant to Paragraph 53(b) of Section XIV (Certification of Completion)] comprehensive general liability insurance with limits of five million dollars, combined single limit, and automobile liability insurance with limits of $500,000, combined single limit, naming the United States and the Commonwealth as an additional insured. In addition, for the duration of this Consent Decree, Settling Performing 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 Performing Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Performing Defendants shall provide to EPA and the Commonwealth certificates of such insurance and a copy of each insurance policy. Settling Performing Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date of this Consent Decree. If Settling Performing Defendants demonstrate by evidence satisfactory to EPA and the Commonwealth 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 Performing Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

64. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Performing Defendants, of any entity controlled by Settling Performing Defendants, or of Settling Performing Defendants' contractors, that delays or

prevents the performance of any obligation under this Consent Decree despite Settling Performing Defendants' best efforts to fulfill the obligation. The requirement that the Settling Performing 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 (a) as it is occurring, and (b) 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, a failure to attain the Performance Standards, or increased costs.

65. 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 Performing Defendants shall notify orally EPA's and the Commonwealth's Project Coordinators or, in his or her absence, EPA's and the Commonwealth's Alternate Project Coordinators. In the event both of EPA's designated representatives are unavailable, the Director of the EPA Region III Hazardous Site Cleanup Division, within forty-eight (48) hours of when Settling Performing Defendants first knew that the event might cause a delay. Within five (5) days thereafter, Settling Performing Defendants shall provide in writing to EPA and the Commonwealth 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 Performing 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 Performing Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The

Settling Performing 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 Performing 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 Performing Defendants shall be deemed to know of any circumstance of which Settling Performing Defendants, any entity controlled by Settling Performing Defendants, or Settling Performing Defendants' contractors knew or should have known.

66. If EPA, upon consultation with the Commonwealth, 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, upon consultation with the Commonwealth, for such time as is necessary to complete those obligations on an expedited basis. 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, upon consultation withthe Commonwealth, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA, upon consultation with the Commonwealth, will notify the Settling Performing Defendants in writing of its decision. If EPA, upon consultation with the Commonwealth, agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Performing Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

67. If the Settling Performing Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Settling Performing 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 Performing Defendants complied with the requirements of Paragraphs 64 and 65, above. If Settling Performing Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Performing Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

68. 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 Performing Defendants that have not been disputed in accordance with this Section. There shall be no dispute resolution or any other judicial review of (1) EPA's selection of the components of the remedy, as set forth in the ROD at pages 38-46, Section 12, "Selected Remedy," including but not limited to the Contingent Remedial Action 1 and/or 2; (2) any refusal or failure by EPA to declare failure of the WMACS or the EMBA Remedial Action or the EMBA Remedial Action Operation and Maintenance; and (3) any other matters for which this Decree expressly states there will be no

dispute resolution or judicial review.

69. Any dispute, except as provided in under paragraph 68, which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

70. 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 ten (10) days after the conclusion of the informal negotiation period, Settling Performing Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States and the Commonwealth 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 Performing Defendants. The Statement of Position shall specify the Settling Performing Defendants' position as to whether formal dispute resolution should proceed under Paragraph 71 or Paragraph 72.

b. Within fourteen (14) days after receipt of Settling Performing Defendants' Statement of Position, upon consultation with the Commonwealth, EPA will serve on Settling Performing 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 71 or 72. Within seven (7) days after receipt of EPA's Statement of Position, Settling Performing Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Performing Defendants as to whether dispute resolution should proceed under Paragraph 71 or 72, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if the Settling Performing 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 71 and 72.

71. 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 Performing Defendants regarding the validity of the ROD's provisions.

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

b. The Director of the Hazardous Site Cleanup Division, EPA Region III, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 71(a). This decision shall be binding upon the Settling Performing Defendants, subject only to the right to seek judicial review pursuant to Paragraph 71(c) and (d).

c. Any administrative decision made by EPA pursuant to Paragraph 71(b) shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Performing Defendants with the Court and served on all Parties within ten (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 Performing Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Performing Defendants shall have the burden of demonstrating that the decision of the Director of the Hazardous Site Cleanup Division, EPA Region III, 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 71(a).

72. 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 Performing Defendants' Statement of Position submitted pursuant to Paragraph 70, the Director of the Hazardous Site Cleanup Division, EPA

Region III, upon consultation with the Commonwealth, will issue a final decision resolving the dispute. The Director's decision shall be binding on the Settling Performing Defendants unless, within ten (10) days of receipt of the decision, the Settling Performing 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 Performing Defendants' motion.

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

73. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of the Settling Performing 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 82. 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 Performing Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section

XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

74. Settling Performing Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 75 and 76 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by Settling Performing 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, 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.

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

Penalty Per Violation Per Day	***Period of Noncompliance***
$ 3,500.00	1st through 14th day
$ 5,000.00	15th through 30th day
$ 8,000.00	31st day and beyond

b. Failure to comply with requirements of Section VI (Performance of the Work by Settling Performing Defendants), Section VII (Remedy Review), Section VIII (Quality Assurance, Sampling, and Data Analysis), Section XI (EPA Approval of Plans and Other Submissions), Section XV (Emergency Response), and Section XVI (Payments for Response Costs).

76. a. The following stipulated penalties shall accrue per violation per day for any

noncompliance identified in Subparagraph b:

Penalty Per Violation Per Day	***Period of Noncompliance***
$ 1,000.00	1st through 14th day
$ 2,000.00	15th through 30th day
$ 3,000.00	31st day and beyond

b. All requirements of this Consent Decree that are not identified in Paragraph 72(b) of this Consent Decree.

77. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 90 of Section XXI (Covenants Not to Sue by Plaintiffs), Settling Performing Defendants shall be liable for a stipulated penalty in the amount of $200,000.

78. 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 Performing Defendants of any deficiency; (2) with respect to a decision by the Director of the Hazardous Site Cleanup Division, EPA Region III, under Paragraph 71(b) or 72(a) of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Performing Defendants' reply to EPA's Statement of Position is received until the date that the Director of the Hazardous Site Cleanup Division, EPA Region III, issues a final decision regarding such dispute; or (3) with respect to

judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, 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.

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

80. All penalties accruing under this Section shall be due and payable to the United States within thirty (30) days of the Settling Performing Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Performing Defendants invoke the dispute resolution procedures under Section XIX (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 the United States Environmental Protection Agency, Superfund Payment, Cincinnati Finance Center, P.O. Box 979076, St. Louis, MO 63197-9000, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #03BD, the DOJ Case Number DJ#90-11-3-1762, 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 as provided in Section XXVI (Notices and Submissions), and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

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

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

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

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

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

83. a. If Settling Performing Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Performing Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 80.

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

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

XXI. COVENANTS NOT TO SUE BY PLAINTIFFS

Covenant Not to Sue by Plaintiff United States

85. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 86, 87, and 89 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 relating to the Site. As to the Settling Performing Defendants, the covenants not to sue set forth in this Paragraph shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 53(b) of Section XIV (Certification of Completion). As to the Settling Non-Performing Defendants, the covenants not to sue set forth in this Paragraph shall take effect, as to each Settling Non-Performing Defendant, upon both of the following: (i) the receipt by EPA and the State of the payments required by Paragraph 57.a and 57.b of Section XVI (Payments for Response Costs); and (ii) receipt by the Settling Performing Defendants of the payments required by Paragraph 57.c of Section XVI (Payments for Response Costs). The covenant not to sue Settling Performing Defendants is conditioned upon the satisfactory performance by Settling Performing Defendants of their obligations under this Consent Decree. The covenant not to sue each of the Settling Non-Performing Defendants is conditioned upon the satisfactory performance by that Settling Non-Performing Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

86. Plaintiffs' Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States and the Commonwealth reserve, 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 Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States or the Commonwealth for additional costs of response if, prior to Certification of Completion of the Remedial Action:

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

(ii) information, previously unknown to EPA or the Commonwealth, is received, in whole or in part,

and EPA determines upon consultation with the Commonwealth 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.

87. Plaintiffs' Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States and the Commonwealth reserve, 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 Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States or the Commonwealth for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

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

(ii) information, previously unknown to EPA or the Commonwealth, is received,

in whole or in part,

and EPA determines upon consultation with the Commonwealth 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.

88. For purposes of Paragraph 86, the information and the conditions known to EPA and the Commonwealth shall include only that information and those conditions known to EPA and the

Commonwealth as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 87, the information and the conditions known to EPA and the Commonwealth shall include only that information and those conditions known to EPA and the Commonwealth as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA and the Commonwealth pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

89. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 85. The United States and the Commonwealth reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within Plaintiffs' covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States and the Commonwealth reserve all rights against Settling Defendants with respect to:

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

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

(3) 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, the Work, or otherwise ordered by EPA or the Commonwealth, after signature of this Consent Decree by the Settling Defendants;

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

(5) criminal liability;

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

(7) liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 16 (Modification of the Work);

(8) liability for additional operable units at the Site or the final response action;

(9) liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

90. Work Takeover.

(a) In the event EPA determines that Settling Performing Defendants have (i) ceased implementation of any portion of the Work, or (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 Performing Defendants. Any Work Takeover Notice issued by

EPA will specify the grounds upon which such notice was issued and will provide Settling Performing 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 90(a), Settling Performing 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 Performing Defendants in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 90(b).

(c) Settling Performing Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 90(b). However, notwithstanding Settling Performing 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 90(b) until the earlier of

(i) the date that Settling Performing 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 XIX (Dispute Resolution) 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 performance guarantee(s) provided pursuant to Section XIII of this Consent Decree, in accordance with the provisions of Paragraph 51 of that Section. If and to the extent that EPA is unable to secure the resources guaranteed under any such performance guarantee(s) and the Settling Performing 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 51, any unreimbursed costs incurred by EPA in performing Work under the Work Takeover shall be considered Future Response Costs that Settling Performing Defendants shall pay pursuant to Section XVI (Payment for Response Costs).

91. Notwithstanding any other provision of this Consent Decree, the United States and the Commonwealth retain all authority and reserve all rights to take any and all response actions authorized by law.

Covenant Not to Sue by Plaintiff Commonwealth of Pennsylvania.

92. The Commonwealth covenants not to sue or to take administrative action against Settling Defendants, pursuant to CERCLA, HSCA, or any other state or federal statutory or common law, for response costs incurred or to be incurred; for response actions, including, without limitation, prompt interim and/or remedial response actions; or for injunctive relief arising from the identified release or threatened release of hazardous substances at the Site. As to the Settling Performing Defendants, the covenants not to sue set forth in this Paragraph shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 53(b) of Section XIV (Certification of Completion). As to the Settling Non-Performing Defendants, the covenants not to sue set forth in this Paragraph shall take effect, as to each Settling Non-Performing

Defendant, upon both of the following: (i) the receipt by the Commonwealth of the payments required by Paragraph 57.b of Section XVI (Payments for Response Costs); and (ii) receipt by the Settling Performing Defendants of the payments required by Paragraph 57.c of Section XVI (Payments for Response Costs). The Commonwealth's covenant not to sue Settling Performing Defendants is conditioned upon the satisfactory performance by Settling Performing Defendants of their obligations under this Consent Decree. The Commonwealth's covenant not sue each of the Settling Non-Performing Defendants is conditioned upon the satisfactory performance by that Settling Non-Performing Defendant of its obligations under this Consent Decree.

XXII. COVENANTS BY SETTLING DEFENDANTS

93. Covenant Not to Sue. Subject to the reservations in Paragraph 93, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or the Commonwealth 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 §§ 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 Pennsylvania 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 95(a) (Waiver of Claims Against De Micromis Parties), Paragraph 95(b) (Waiver of Claims Against *De Minimis* Parties), and Paragraph 100 (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 86, 87, 89(2) - (4) or 89(7) - (11), 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.

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

95. 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).

96. a. 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 the materials contributed by such person to the Site containing hazardous substances are 2200 gallons or less. 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 a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

b. 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 that has entered into a final CERCLA § 122(g) *de minimis* settlement with EPA with respect to the Site as of the Effective Date. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

97. Except as provided in Paragraph 95(a) (Waiver of Claims Against De Micromis Parties) and Paragraph 95(b) (Waiver of Claims Against De Minimis 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 95(a) (Waiver of Claims Against De Micromis Parties) and Paragraph 95(b) (Waiver of Claims Against De Minimis 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.

98. The Parties agree, and by entering this Consent Decree this Court finds, that the 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), Section 705(c)(2) of HSCA, 35 P.S. § 6020.705(c)(2); and Section 501(a) of Act 2, 35 P.S. § 6026.501(a), for matters addressed in this Consent Decree. Nothing herein shall prevent Settling Defendants from suing one another for failing to comply with the terms of the existing agreement between the Settling Performing Defendants and the Settling Non-Performing Defendants with respect to any private agreement to fund the Work or perform the Work or perform other obligations under this Consent Decree.

99. 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 and the Commonwealth in writing no later than sixty (60) days prior to the initiation of such suit or claim.

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

101. 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 XXI (Covenants Not to Sue by Plaintiffs).

XXIV. ACCESS TO INFORMATION

102. Settling Performing Defendants shall provide to EPA and the Commonwealth, 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 Performing Defendants shall also make available to EPA and the Commonwealth, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

103. a. Settling Performing Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs 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), or 40 C.F.R. Part 2, Subpart B. Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the Commonwealth, or if EPA has notified Settling Performing Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

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 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 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.

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

XXV. RETENTION OF RECORDS

105. Until ten (10) years after the Settling Performing Defendants' receipt of EPA's notification pursuant to Paragraph 53(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, provided, however, that Settling Defendants who are potentially liable as owners or operators of the Site 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 Settling Performing Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the

Work, provided, however, that each Settling Performing Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

106. At the conclusion of this document retention period, Settling Performing Defendants shall notify the United States and the Commonwealth at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Performing Defendants shall deliver any such records or documents to EPA. If the United States has not responded to Settling Performing Defendants' notice prior to the time Settling Performing Defendants intend to destroy the records or documents, Settling Performing Defendants shall deliver all such records and documents to EPA no earlier than ten (10) days after providing an additional written notice that such records and documents will be delivered, unless EPA provides otherwise after receiving such notice. The Settling Performing 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 Performing 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 Performing 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.

107. 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 Commonwealth 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.

XXVI. NOTICES AND SUBMISSIONS

108. 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 Commonwealth, 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#90-11-3-1762

Jefferie Garcia
Senior Assistant Regional Counsel (3RC42)
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

As to EPA:

Bhupendra Khona (3HS22)
EPA Project Coordinator
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

Linda Dietz
Alternate EPA Project Coordinator
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

As to the Commonwealth:

Dawna Saunders
Commonwealth Project Coordinator
Pennsylvania Department of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA 15222-4745

Barbara Gunter
Alternate Commonwealth Project Coordinator
Pennsylvania Department of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA 15222-4745

As to the Settling Defendants:

Leo M. Brausch, P.E.
Consulting Environmental Engineer

131 Wedgewood Drive
Gibsonia, PA 15044-9795

Thomas C. Gricks
Schnader
Fifth Avenue Place
120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222-3001

XXVII. EFFECTIVE DATE

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

XXVIII. RETENTION OF JURISDICTION

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

XXIX. APPENDICES

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

"Appendix A" is the Cost Summary for the Site referred to in the definition of "Past Response Costs".

"Appendix B" is the Draft Easement.

"Appendix C" is the ROD.

"Appendix D" is the list of Settling Non-Performing Defendants.

"Appendix E" is the list of Settling Performing Defendants.

"Appendix F" is the Cost Summary for the Site referred to in the definition of "Past Response Costs".

"Appendix G" is an example of a Performance Guarantee.

"Appendix H" is an example of a CFO letter.

XXX. COMMUNITY RELATIONS

112. Settling Performing Defendants shall propose to EPA and the Commonwealth their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Performing Defendants under the Plan. Settling Performing Defendants shall also cooperate with EPA and the Commonwealth in providing information regarding the Work to the public. As requested by EPA, Settling Performing 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 Commonwealth to explain activities at or relating to the Site.

XXXI. MODIFICATION

113. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of the EPA Project Coordinator (upon consultation with the Commonwealth) and the Settling Performing Defendants. All such modifications shall be made in writing.

114. Except as otherwise provided in this Paragraph, no modifications shall be made to provisions of this Consent Decree without written notification to and written approval of the

United States, Settling Performing Defendants, and the Court. Prior to providing its approval to any modification to the provisions of this Consent Decree, the United States will consult with the Commonwealth on the proposed modification. Modifications to the Remedial Design Work Plan, Remedial Action Work Plan, and if required by EPA, the Contingent Remedial Design/Contingent Remedial Action Work Plan 1 and/or 2 and any other plan approved by EPA under this Consent Decree that do not materially alter the requirements of those documents may be made by written agreement between the EPA Project Coordinator, after consulting with the Commonwealth on the proposed modification, and the Settling Performing Defendants. Modifications to the Work made pursuant to Paragraph 16 ("Modification of the Work") may be made by EPA. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

115. 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.

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

XXXIII. SIGNATORIES/SERVICE

117. 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.

118. 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.

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

XXXIV. FINAL JUDGMENT

120. 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. 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, the Commonwealth, 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 31st **DAY OF** August **, 200**9 **.**

/s/ Joy Flowers Conti
Honorable Joy Flowers Conti
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. AK Steel Corporation, et al., relating to the Breslube Penn Superfund Site.

FOR THE UNITED STATES OF AMERICA

6/1/09

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division

DATE

5/12/09

MARCELLO MOLLO
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-2757

DATE

MARY BETH BUCHANAN
United States Attorney
Western District of Pennsylvania

s/Jessica Lieber Smolar
JESSICA LIEBER SMOLAR
Assistant United States Attorney
Western District of Pennsylvania
U.S. Post Office and Courthouse
700 Grant Street, Suite 400
Pittsburgh, PA 15219

6/1/09

DATE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. AK Steel Corporation, et al., relating to the Breslube Penn Superfund Site.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

5/27/09

WILLIAM C. EARLY — DATE
Acting Regional Administrator, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

5-12-09

JUDY KATZ — DATE
Acting Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103

5-12-09

JEFFERIE GARCIA — DATE
MARY E. RUGALA
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. AK Steel Corporation, et al., relating to the Breslube Penn Superfund Site.

FOR THE COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION

David E. Eberle
Regional Manager
Environmental Cleanup Program
Southwest Region

Edward S. Stokan, Esq.
Attorney for the Department

FOR: AK Steel Corporation

BY: _____
[Signature]

Name: David C. Horn

Title: Senior Vice President and General Counsel

Address: 9227 Centre Pointe Drive
West Chester, OH 45069

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

Please Type the Following:

Name: John J. Kuzman, Jr.

Title: Chief Compliance Officer and Assistant General Counsel

Address: 9227 Centre Pointe Drive
West Chester, OH 45069

Telephone: 513-425-5224

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

FOR ALCOA INC. ~~COMPANY, INC.~~*

[Signature]

Insert the Following:

Name: Ronald D. Dickel

Title: Vice President

Address: 201 Isabella Street, Pittsburgh, PA 15212

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

Please Type the Following:

Name: John A. Sheehan

Title: Senior Attorney

Address: Hunton & Williams
951 East Byrd Street
Richmond, Virginia 23219

Telephone: (804) 787-8150

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

FOR CBS CORPORATION:

[Signature]

Name: Eric J. Sobczak

Title: Senior Vice President & Associate General Counsel

Address: 20 Stanwix Street, 10th Floor, Pittsburgh, PA 15222

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

Please Type the Following:

Name: Corporation Service Company

Address: 2704 Commerce Drive, Suite B
Harrisburg, PA 17110

Telephone: (800) 927.9801

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

FOR: ELLIOTT COMPANY

William K. Cox

Date: March 16, 2009

[Signature]

Name: William K. Cox

Title: Vice President, General Counsel and Secretary

Address: 901 North Fourth Street
Jeannette, PA 15644-1473

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

Please Type the Following:

Name: Joseph R. Brendel, Esquire

Title: Counsel for Elliott Company

Address: Thorp Reed & Armstrong, LLP
301 Grant Street, 14th Floor
Pittsburgh, PA 15219-1425

Telephone: 412-394-2373

Facsimile: 412-394-2555

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

FOR: **Exxon Mobil Corporation** (on behalf of itself and its current and former subsidiaries and affiliates)*

[Signature]

Insert the Following:

Name: Michael W. Schwehr

Title: Manager, Major Projects, EMES
Agent and Attorney-in-Fact

Address: 3225 Gallows Road
Room 8B0202
Fairfax, Virginia 22037
Phone: (703) 846-1702

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

Please Type the Following:

Name: Corporation Service Company

Address: 2704 Commerce Drive
Harrisburg, Pennsylvania 17110

Telephone: (717) 234-9715

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FOR FORD MOTOR COMPANY:

[Signature]

Name: Louis J. Ghilardi

Title: Assistant Secretary

Address: ONE AMERICAN ROAD, DEARBORN, MI 48126

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

Please Type the Following:

Name: David J. Witten

Title: Attorney, Office of the General Counsel, Ford Motor Company

Address: One American Road, Room 407-A2, DEARBORN, MI 48126

Telephone: (313) 845-8476

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FOR: HUSSEY COPPER LTD., for and on behalf of itself and its general partner, HUSSEY COPPER CORP.

Roy D Allen

[Signature]

Date: March 10, 2009

Name: Mr. Roy D. Allen

Title: President and CEO of Hussey Copper Corp., General Partner of Hussey Copper Ltd.

Address: 100 Washington Street
Leetsdale, PA 15056

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

Please Type the Following:

Name: Joseph R. Brendel, Esquire

Title: Counsel for Hussey Copper Ltd.

Address: Thorp Reed & Armstrong, LLP
301 Grant Street, 14th Floor
Pittsburgh, PA 15219-1425

Telephone: 412-394-2373

Facsimile: 412-394-2555

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FOR _____ COMPANY, INC.:*

United States Steel Corporation (formerly known as United States Steel, LLC and USX Corporation)

_____
[Signature]

Insert the Following:

Name: James D. Garraux

Title: General Counsel and Sr. Vice President of Labor Relations and Environmental Affairs

Address: United States Steel Corporation
600 Grant Street, Suite 6100
Pittsburgh, PA 15219-2800

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

Please Type the Following:

Name: Andrew G. Thiros

Title: Attorney - Environmental

Address: United States Steel Corporation
600 Grant Street, Suite 1500, Pittsburgh, PA 15219-2800

Telephone: 412-433-2983

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

FOR: ALL-CLAD METALCRAFTERS LLC

[Signature]

Name: Jose Augusto P. Oliveira

Title: President & Chief Executive Officer

Address: 424 Morganza Road
Canonsburg, PA 15317

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

Please Type the Following:

Name: Jose Augusto P. Oliveira

Title: President & Chief Executive Officer

Address: 424 Morganza Road
Canonsburg, PA 15317

Telephone: (724)745-8300

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

FOR _____ COMPANY, INC.:*

AMERICAN REFINING GROUP, INC.

[Signature]

Insert the Following:

Name: John Trinkl

Title: Senior Vice President

Address: 100 Four Falls Corporate Center, Suite 215
West Conshohocken, PA 19428

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

Please Type the Following:

Name: Daniel P. Trocchio

Title: Outside Counsel

Address: Henry W. Oliver Bldg., 535 Smithfield Street
Pittsburgh, PA 15222

Telephone: (412) 355-6284

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United States v. AK Steel, et. al
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FOR BP Products North America Inc.

[Signature]

Insert the Following:

Name: Patrick King

Title: President & COO

Address: 501 Westlake Park Blvd.
Houston, TX 77079

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

Please Type the Following:

Name: John C. Laager

Title: Ballard Spahr Andrews & Ingersoll, LLP

Address: 1735 Market Street, Philadelphia, PA 19103

Telephone: (215) 665-8500

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FOR Atlantic Richfield Company

[Signature]

Insert the Following:

Name: Patricia King

Title: President & COO

Address: 501 Westlake Park Blvd
Houston, TX 77079

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

Please Type the Following:

Name: John C. Laager

Title: Ballard Spahr Andrews & Ingersoll,LLP

Address: 1735 Market Street, Philadelphia, PA 19103

Telephone: (215) 665-8500

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FOR Englefield, Inc., d/b/a Englefield Oil Company, Buckeye Lake Truck Stop

[Signature]

Insert the Following:

Name: F W Englefield IV

Title: President

Address: 447 James Parkway
Heath, Ohio 43056

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

Please Type the Following:

Name: Frank J. Reed, Jr.
(O.S. Ct 0055234)

Title: Attorney at Law

Address: 41 South High Street, Suite 2600
Columbus, Ohio 43215

Telephone: (614) 223-9304

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

FOR CHEVRON U.S.A. INC.:

[Signature]

Name: **Kathryn L. Beck**

Title: **Assistant Secretary**

Address: 6001 Bollinger Canyon Rd
San Ramon, CA 94583

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

Please Type the Following:

Name: Corporation Service Company

Title: _____

Address: 2704 Commerce Drive, Harrisburg, PA 17110

Telephone: 800 222 2122

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United States v. AK Steel, et. al

Remedial Design/Remedial Action Consent Decree

FOR TEXACO INC.:

[Signature]

Name: **Kathryn L. Beck**

Title: **Assistant Secretary**

Address: 6001 Bollinger Canyon Rd
San Ramon, CA 94583

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

Please Type the Following:

Name: Corporation Service Company

Title: _____

Address: 2704 Commerce Drive, Harrisburg, PA 17110

Telephone: 800 222 2122

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Consolidated Rail Corporation

FOR _____ COMPANY, INC.:*

[Signature]

Insert the Following:

Name: Jonathan M. Broder

Title: VP-General Counsel & Corp. Secretary

Address: 1717 Arch Street, 32nd Floor
Philadelphia, PA 19103

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

Please Type the Following:

Name: Jonathan M. Broder

Title: VP-General Counsel & Corp. Secretary

Address: 1717 Arch Street, 32nd Floor
Philadelphia, PA 19103

Telephone: 215-209-5020

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

FOR: CONTINENTAL TIRE NORTH AMERICA, INC.

[Signature]

Name: George R. Jurch, III

Title: General Counsel and Secretary

Address: 1830 MacMillian Park Drive
Fort Mill, SC 29707

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

Please Type the Following:

Name: CT Corporation

Title: Process Agent

Address: 116 Pine Street
Suite 320
Harrisburg, PA 17101

Telephone: 717-234-6004

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

FOR: CROUSE FORD SALES INC.

[Signature]

Name: Kenneth D. Crouse

Title: President

Address: 11 Antrim Boulevard
Taneytown, MD 21787

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

Please Type the Following:

Name: Kenneth D. Crouse

Title: President

Address: 11 Antrim Boulevard
Taneytown, MD 21787

Telephone: 410-756-6655

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

FOR: CSX Transportation, Inc. *

[Signature]

Insert the Following:

Name: Howard R. Elliott

Title: VP Public Safety & Environment

Address: 500 Water Street, J275, Jacksonville, FL 32202

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

Please Type the Following:

Name: Carl B. Everett, Esq.

Title: Partner

Address: Centre Square West, 1500 Market St., 38th Fl. Philadelphia, PA 19102

Telephone: (215) 972-7171

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

FOR DEVON ENERGY CORPORATION:

Lyndon C. Taylor
[Signature]

Name: Lyndon C. Taylor

Title: Executive Vice President & General Counsel

Address: Devon Energy Corporation

20 North Broadway

Oklahoma City, Oklahoma 73102

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

Please Type the Following:

Name: The Corporation Trust Company

Title: _____

Address: 1209 Orange Street

Wilmington, DE 19801

Telephone: 302 658-7581

Fax: 302-655-5049

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

FOR DTC Environmental Services, Inc.

James R Reed Jr

[Signature]

Insert the Following:

Name: JAMES R Reed JR

Title: PRESIDENT

Address: 2567 Congo-Arroyo Rd
Newell, WV. 26050

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

Please Type the Following:

Name: _____

Title: _____

Address: _____

Telephone: _____

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FOR: Environmental Oil, Inc.

[Signature]

Name: _____ Al Staiti _____

Title: ____ Indemnitor _____

Address: _____c/o Authorized Agent (see below)___

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

Please Type the Following:

Name: ___Christopher Staiti _____

Title: ___Attorney for Indemnitor _____

Address: Stevens & Staiti, LLP
1401 Madison Park Drive
Glen Burnie, Maryland 21061

Telephone: ____ (410) 787-1123 _____

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

FOR GENERAL ELECTRIC COMPANY:

[Signature]

Name: Todd Wyman

Title: Vice President Global Supply Chain

Address: 2901 East Lake Road
Building 14-5
Erie, PA 16531

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

Please Type the Following:

Name: Russell S. Warner, Esquire

Title: Attorney for General Electric Company

Address: MacDonald, Illig, Jones & Britton LLP
100 State Street, Suite 700
Erie, PA 16507-1459

Telephone: (814) 870-7759

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FOR GORDON TERMINAL SERVICE CO., A DELAWARE CORPORATION:

[Signature]

Name: Timothy H. Gordon

Title: Vice President

Address: P.O. Box 313, Agnes Street, McKees Rocks, PA, 15136

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

Please Type the Following:

Name: Timothy H. Gordon

Title: Vice President

Address: P.O. Box 313, Agnes Street, McKees Rocks, PA 15136

Telephone: 412-331-9410

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

FOR GORDON TERMINAL SERVICE CO., OF PA:

[Signature]

Name: Timothy H. Gordon

Title: Vice President

Address: P.O. Box 313, Agnes Street, McKees Rocks, PA, 15136

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

Please Type the Following:

Name: Timothy H. Gordon

Title: Vice President

Address: P.O. Box 313, Agnes Street, McKees Rocks, PA 15136

Telephone: 412-331-9410

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

FOR J. C. Penney Corporation, Inc. f/k/a J. C. Penney Company, Inc.

[Signature]

Name: Aman Zahiruddin

Title: Senior Counsel

Address: J. C. Penney Corporation, Inc.
6501 Legacy Drive, MS 1119
Plano, Texas 75024-3698

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

Please Type the Following:

Name: Aman Zahiruddin

Title: Senior Counsel

Address: J. C. Penney Corporation, Inc., 6501 Legacy Drive, MS 1119, Plano, Texas 75024-3698

Telephone: (972) 431-1256

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

FOR JERRY'S CHEVROLET, INC.:

Gail L Wallace

[Signature]

Name: Gail Wallace

Title: Secretary and Treasurer

Address: 1940 E. Joppa Road
Baltimore, MD 21234

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

Name: Lloyd D. Lurie

Title: Attorney

Address: 200 E. Lexington Street, Suite 1300
Baltimore, MD 21202

Telephone: 410-837-8000

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FOR Miller Motors, Inc., a dissolved Maryland corporation

[Signature]

Insert the Following:

Name: Wm PASZYNSKI

Title: G.M. PRES

As Authorized Director

Address:
c/o Ober, Kaler, Grimes & Shriver
120 E. Baltimore Street
Baltimore, MD 21202

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

Please Type the Following:

Name: Marc K. Cohen

Title: Esquire

Address: Ober, Kaler, Grimes & Shriver
120 E. Baltimore Street, Baltimore, MD 21202

Telephone: 410-547-7663

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

FOR: The OWL CORPORTION

[Signature]

Name: __F. Thomas Leyden_____

Title: _____President _____

Address: _1900 Graves Court, Dundalk, MD 21222

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

Please Type the Following:

Name: _Maureen E. Murphy, Esquire _____

Title: ___Attorney_____

Address: _14 North Rolling Rd., Catonsville, MD 21228

Telephone: _410-744-4967_____

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

FOR Park Circle Motor Company f/d/b/a
Legum Chevrolet

[Signature]

Name: Thomas J. Karwacki

Title: Treasurer

Address: 1829 Reisterstown Road, Suite 140
Balto. MD. 21208

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

Please Type the Following:

Name: _____

Title: _____

Address: _____

Telephone: _____

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FOR: PARR OF VIRGINIA, INC. T/A
T/A COURTESY CHRYSLER/JEEP
FORMERLY T/A COURTESY AMC/JEEP

_____
Signature

Name: Christopher Zourdos

Title: President

Address: 755 ROCKVILLE PIKE ROCKVILLE, MD. 20852

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

Please Type the Following:

Name: _____

Title: _____

Address: _____

Telephone: _____

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FOR PENNZOIL-QUAKER STATE COMPANY

[Signature]

Name: William C. Records

Title: Vice President
Supply Chain Operations
Pennzoil Quaker State Company
DBA SOPUS Products

Address: 700 Milam Street
Houston, Tx 77002

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

Name: The Corporation Trust Company

Address: 1209 Orange Street
Corporation Trust Center
Wilmington DE 19801

Telephone: 866/925-9916

FOR Port Authority of Allegheny County

[Signature]

Insert the Following:

Name: Michael J. Cetra, Esquire

Title: General Counsel

Address: 345 Sixth Avenue, 3rd Floor, Pittsburgh, PA 15222

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

Please Type the Following:

Name: Michael J. Cetra, Esquire

Title: General Counsel

Address: 345 Sixth Avenue, 3rd Floor, Pittsburgh, PA 15222

Telephone: 412-566-5245

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FOR QUALITY CARRIERS, INC. (Successor to O'Boyle Tank Lines):

James A. Rakitsky

[Signature]

Name: James A.Rakitsky

Title: Vice President, Environmental Services

Address: c/o Quality Distribution, Inc.
150 E. Pennsylvania Ave., Suite 430
Downingtown, PA 19335

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

Name: Bonni F. Kaufman, Esq.

Title: Attorney

Address: Holland + Knight
2099 Pennsylvania Avenue, NW
Washington, DC 20006

Telephone: 202-419-2547

6291846_v1

FOR INVENSYS CONTROLS AMERICAS
f/k/a Robertshaw Controls Company

_____
[Signature]

Insert the Following:

Name: Timothy J. Dolan

Title: Vice President

Address: c/o McGuire Woods, One James Center, 901 East Cary Street, Richmond VA 23219

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

Please Type the Following:

Name: Timothy J. Dolan

Title: Vice President

Address: c/o McGuire Woods, One James Center, 901 East Cary Street, Richmond, VA 23219

Telephone: 804-644-7791

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FOR SHELL OIL COMPANY

[Signature]

Name: William E. Platt, III

Title: Senior Manager, Discontinued Operations

Address: 910 Louisiana, Suite 664, Houston, TX 77002

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

Name: The Corporation Trust Company

Address: 1209 Orange Street
Corporation Trust Center
Wilmington DE 19801

Telephone: 866/925-9916

FOR SHENANGO INCORPORATED.:*

[Signature]

Insert the Following:

Name: Gerald S. Endler

Title: Senior Vice President and General Counsel

Address: 414 S. Main Street, Suite 600, Ann Arbor, MI 48104

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

Please Type the Following:

Name: Gerald S. Endler

Title: Senior Vice President and General Counsel

Address: 414 S. Main Street, Suite 600, Ann Arbor, MI 48104

Telephone: (734) 302-4894

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FOR Swartz Cadilla **COMPANY, INC.:***

(Signature)

Insert the Following:

Name: George Hader

Title: Senior Managing Director

Address: 10400 York Road, Cockeysville, MD 21030

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

Please Type the Following:

Name: Chelsey L. Moscati, Esquire

Title: Attorney

Address: 233 E. Redwood Street, Baltimore, MD 21202

Telephone: (410) 576-4222

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