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

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NORTHERN DISTRICT OF OHIO
CLEVELAND

UNITED STATES OF AMERICA, Plaintiff, v. REILLY INDUSTRIES, INC., Defendant.	)	5:98CV 1409 CIVIL ACTION NO. JUDGE ECONOMUS

Am 9/11/98 - ad

CONSENT DECREE

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

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CLERK
NORTHERN DISTRICT COURT OF OHIO
CLEVELAND

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	CIVIL ACTION NO.
REILLY INDUSTRIES, INC.,	)	98 CV 1409
Defendant.	)	JUDGE [illegible]

CONSENT DECREE

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

UNITED STATES OF AMERICA, Plaintiff, v. REILLY INDUSTRIES, INC., Defendant.	)	CIVIL ACTION NO.

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607, concurrently with the lodging of this consent decree.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of [illegible] Corporation Superfund Site in Dover, Ohio, together with accrued

interest; and (2) performance of studies and response work by the defendant at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Ohio (the "State") on July 31, 1997 of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Department of the Interior and the Ohio Department of Natural Resources, Division of Wildlife on July 31, 1997 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.

E. The defendant that has entered into this Consent Decree ("Settling Defendant") does not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor does Settling Defendant acknowledge that the

release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

F. 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 24, 1988.

G. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, the Settling Defendant commenced on December, 1989, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

H. The Settling Defendant completed a Remedial Investigation ("RI") Report in June of 1993, and completed a Feasibility Study ("FS") Report in December of 1996.

I. 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 in January of 1997, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon

which the Regional Administrator based the selection of the response action.

J. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on March 31, 1997. The State had a reasonable opportunity to review and comment on the ROD. The State has concurred with the ROD. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

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

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

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

interest.

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

II. JURISDICTION

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

III. PARTIES BOUND

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

3. Settling Defendant 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 Defendant or its 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 Defendant shall nonetheless be responsible for ensuring that its 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 Defendant 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:

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

§§ 9601 et seq.

"Consent Decree" shall mean this 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.

"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.

"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 incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, attorneys fees and any monies paid to secure access and/or to secure institutional

controls, including the amount of just compensation), XV, and Paragraph 85 of Section XXI. Future Response Costs shall also include all Interim Response Costs and all Interest on the Past Response Costs that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from February 28, 1997 to the date of entry of this Consent Decree.

"Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between February 28, 1997 and the effective date of this Consent Decree, or (b) incurred prior to the effective date of this Consent Decree but paid after that date.

"Interest," shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

"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.

"OEPA" shall mean the Ohio environmental Protection Agency and any successor departments or agencies of the State.

"Operation and Maintenance" or "O & M" shall mean all activities 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 and the Statement of Work (SOW).

"Owners" shall mean Mr. and Mrs. Quillin, the current owners of the Reilly Tar & Chemical Corporation Site.

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

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

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through February 28, 1997, plus Interest on all such costs which has 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 in Sections VII and IX of the ROD and Section II of the SOW.

"Plaintiff" shall mean the United States.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42

U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on March 31, 1997, by the Regional Administrator, EPA Region V, or his/her delegate, and all attachments thereto. The ROD is attached as Appendix A.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendant to implement the ROD, in accordance with the SOW and 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 Defendant 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 11 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 Defendant" shall mean Reilly Industries, Inc., formerly known as Reilly Tar & Chemical Corporation.

"Site" or "Reilly Tar & Chemical Corporation Site" shall mean the parcel of property formerly owned and operated by Reilly Tar & Chemical Corporation and currently owned by Ronald and Lois Quillin, encompassing approximately 4 acres, located at Third Street on the southwest edge of the City of Dover, southeast of junction of State Route 211 and State Route 39, three-quarters of a mile north of the juncture of Sugar Creek and the Tuscarawas River, in Tuscarawas County, in Ohio, depicted generally on the map attached as Appendix C1 and areas outside of the above-described 4-acre parcel on which coal tar contamination was discovered during the Remedial Investigation, depicted on the map attached as Appendix C2.

"State" shall mean the State of Ohio.

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

"Supervising Contractor" shall mean the principal contractor

retained by the Settling Defendant 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 Defendant is 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 Defendant, to reimburse response costs of the Plaintiff, and to resolve the claims of Plaintiff against Settling Defendant as provided in this Consent Decree.

6. Commitments by Settling Defendant

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

7. Compliance With Applicable Law

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

8. Permits

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the

contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendant 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. Within 15 working days after the entry of this Consent Decree, the Settling Defendant shall use its best efforts to have the Owners record notice of the entry of this Consent Decree with the Recorder's Office [or Registry of Deeds or other appropriate office], Tuscarawas County, State of Ohio. Thereafter, each deed, title, or other instrument conveying an interest in the property included in the Site shall contain a notice stating that the property is subject to this Consent Decree and shall reference the

recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree. No penalties shall be imposed on the Settling Defendant if it has used its best efforts and the Owners have failed to comply with the requirements of this paragraph.

b. Within 15 working days after the entry of this Consent Decree, the Settling Defendant shall use its best efforts to obtain from the Owners a notice of obligation to provide access under Section IX (Access) and related covenants, if any. Settling Defendant shall also use its best efforts to obtain agreement from the Owners that each subsequent instrument conveying an interest to any such property included in the Site shall reference the recorded location of such notice and covenants applicable to the property.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Defendant pursuant to Sections VI (Performance of the Work by Settling Defendant), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Settling Defendant hereby notifies EPA that

it has selected August Mack Environmental, Inc. as its Supervising Contractor. August Mack assisted in the completion of the feasibility study for the Dover, Ohio site. EPA has issued an authorization to proceed. If at any time thereafter, Settling Defendant proposes to change a Supervising Contractor, Settling Defendant shall give notice in writing of the name, title and qualifications of the contractor to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

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

c. If EPA fails to provide written notice of its

authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Defendant from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendant may seek relief under the provisions of Section XVIII (Force Majeure) hereof.

11. Remedial Design.

a. Within thirty (30) days after EPA's issuance of an authorization to proceed pursuant to Paragraph 10, Settling Defendant shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan"). The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD, in accordance with the SOW and for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree and/or the SOW. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. Within thirty (30) days after EPA's issuance of an authorization to proceed, the Settling Defendant shall submit to EPA and the State a Health and Safety Plan for field design activities which conforms to the applicable Occupation 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 and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (A) a Pre-Design Studies Plan, which would include (1) a Pumping Test Plan (if necessary) and (2) a Perched Aquifer Pre-Treatment Plan (if necessary)(cross referenced to the existing Field Sampling Plan ("FSP"), Quality Assurance Project Plan ("QAPP"), and the Health and Safety Plan ("HSP"), with modifications as appropriate and (B) a Plan for Satisfaction of Permitting Requirements.

c. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Settling Defendant shall implement the Remedial Design Work Plan in accordance with the SOW. The Settling Defendant shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendant shall not commence further Remedial Design activities at the Site prior to written approval by EPA of the Remedial Design Work Plan.

d. The Draft Design submittal shall include, at a minimum, the following: (1) Results of hydrogeologic modeling, pump tests, bench scale and pilot scale treatability testing, and additional field testing or sampling, if conducted; (2) Preliminary plans, drawings, and sketches, including design calculations; (3) General concept design assumptions; (4) Outline of required bid and performance specifications; (5) Real estate, easement, and permit requirements; (6) Preliminary construction schedule, including contracting strategy; (7) Draft Performance Standards Verification Plan (including the FSP/QAPP); (8) Draft Construction Quality Assurance Plan ("CQAP"); (9) Draft HSP; (10) Procedures and plans for the decontamination of equipment and the disposal of contaminated materials during construction; (11) Draft Operation and Maintenance (O&M) Plan. The O&M plan shall contain long term monitoring and operation requirements and compliance with Applicable or Relevant and Appropriate Requirements (ARARs); and (12) Draft Contingency Plan.

e. The final design submittal shall include, at a minimum, the following: (1) Final Performance Standard Verification Plan (including the final FSP/QAPP); (2) Final CQAP; (3) Final HSP; (4) Final Operation and Maintenance Plan, including long term monitoring and operation requirements, including requirements for

demonstrating compliance with Applicable or Relevant and Appropriate Requirements (ARARs); (5) Final Contingency Plan; (6) Capital Operation and Maintenance Cost Estimate. The cost estimate shall refine the FS cost estimate to reflect the detail presented in the Final Design; (7) The Final Project Schedule for the construction and implementation of the RA which identifies timing for initiation and completion of all critical path tasks will be submitted as part of the Final Design and Final RA Work Plan and shall include specific dates for completion of the project and major milestones.

12. Remedial Action.

a. Within thirty (30) days after the approval of the final design submittal, Settling Defendant shall submit to EPA and the State, a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree.

At the same time as it submits the Remedial Action Work Plan, Settling Defendant shall submit to EPA and the State a Health and Safety Plan for field activities required by the Remedial Action Work Plan 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 Action Work Plan shall include a project schedule for each major activity and submission of deliverables generated during the RA.

c. Upon approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the State, Settling Defendant shall implement the activities required under the Remedial Action Work Plan. The Settling Defendant shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved 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). Settling Defendant shall not commence physical Remedial Action activities at the Site prior to written approval by EPA of the Remedial Action Work Plan.

13. The Settling Defendant shall continue to implement the Remedial Action and O&M until the Performance Standards, except for

those Performance Standards relating to river sediments, are achieved and for so long thereafter as is otherwise required under this Consent Decree.

14. Modification of the SOW or Related Work Plans.

a. If EPA determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated in the SOW and/or such work plans. Provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

b. For the purposes of this Paragraph and Paragraphs 48 and 49 only, the "scope of the remedy selected in the ROD" consists of the remedial action objectives set forth in Section VII of the ROD and the remedial response action set forth in Section IX of the ROD and further set forth in Section II of the SOW. However, because the Settling Defendant is performing an Ecological Risk Assessment for river sediments pursuant to Section II.7 of the SOW, the Parties agree that for purposes of this Paragraph and this

Consent Decree, the Consent Decree shall not include remediation of river sediments. If EPA subsequently determines that remedial action is necessary for the river sediments, it will so advise the Settling Defendant. Settling Defendant will not be required by this Consent Decree to implement remedial action for river sediments. The parties further agree that for purposes of determining the statute of limitations, any action brought by EPA to recover the costs of remediating the river sediments may be brought within 6 years after U.S. EPA approves the Ecological Risk Assessment Study submitted by Settling Defendant pursuant to Section II.7 of the SOW.

c. If Settling Defendant objects to any modification determined by EPA to be necessary pursuant to this Paragraph, it may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 66 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

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

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

as otherwise provided in this Consent Decree.

15. Settling Defendant acknowledges and agrees that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

16. Settling Defendant shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. The Settling Defendant shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material are 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 Defendant 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 Defendant following the award of the contract for Remedial Action construction. The Settling Defendant shall provide the information required by Paragraph 16.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

VII. REMEDY REVIEW

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

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

19. Opportunity To Comment. Settling Defendant and, if

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

20. Settling Defendant's Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, the Settling Defendant shall undertake such further response actions to the extent that the reopener conditions in Paragraph 81 or 82 (United States reservations of liability based on unknown conditions or new information) are satisfied. Settling Defendant may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that further response actions for the reopener conditions of Paragraph 81 or 82 of Section XXI (Covenants Not To Sue by Plaintiff) are warranted, (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 66 (record review).

21. Submissions of Plans. If Settling Defendant is required to perform the further response actions pursuant to Paragraph 20, it shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendant) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

22. Settling Defendant shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation," (EPA QA/R5; "Preparing Perfect Project Plans," (EPA /600/9-88/087), "Interim Guidance and Specifications for Preparing Quality Assurance Project Plans, U.S. EPA Office of Emergency and Remedial Response, QAMS-005/80, December 1980" and subsequent amendments to such guidelines upon notification by EPA to Settling Defendant of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. 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 Defendant

shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendant in implementing this Consent Decree. In addition, Settling Defendant shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendant shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree. Settling Defendant shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Defendant shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

23. Upon request, the Settling Defendant shall allow split or duplicate samples to be taken by EPA or its authorized

representatives. Settling Defendant shall notify EPA not less than twenty-eight (28) days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Settling Defendant to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Settling Defendant's implementation of the Work.

24. Settling Defendant shall submit to EPA and the State one (1) copy each of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendant with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

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

IX. ACCESS AND INSTITUTIONAL CONTROLS

26. Commencing upon the date of lodging of this Consent Decree, the Settling Defendant agrees to provide the United States and its representatives, including EPA and its contractors, access at all

reasonable times to the Site and any other property to which access is required for the implementation of this Consent Decree, to the extent access to the property is controlled by Settling Defendant, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

a. Monitoring the Work;

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

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

d. Obtaining samples;

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

f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section XXIV; and

g. Assessing Settling Defendant's compliance with this Consent Decree.

27. To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Settling Defendant, Settling Defendant shall use best efforts to secure from such

persons access for Settling Defendant, as well as for the United States and its representatives, including, but not limited to, its contractors, as necessary to effectuate this Consent Decree. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration of access. If any access required to complete the Work is not obtained within 45 days of the date of lodging of this Consent Decree, or within 45 days of the date EPA notifies the Settling Defendant in writing that additional access beyond that previously secured is necessary, Settling Defendant shall promptly notify the United States in writing, and shall include in that notification a summary of the steps Settling Defendant has taken to attempt to obtain access. The United States may, as it deems appropriate, assist Settling Defendant in obtaining access. Settling Defendant shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining access.

28. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

29. EPA has determined that the following institutional

controls are necessary to effectuate the Remedial Action for the Site and to protect the public health or welfare or the environment:

a. Settling Defendant shall maintain in good repair the security fence around the perimeter of the Site and shall prominently display warning signs.

b. Settling Defendant shall use its best efforts to obtain restrictions consistent with the ROD on use and access to the Site, except for use and access by EPA, the State and/or other authorized representatives.

X. REPORTING REQUIREMENTS

30. In addition to any other requirement of this Consent Decree, Settling Defendant shall submit to EPA and the State two (2) copies of written progress reports prepared monthly during RA construction activities and in conjunction with routine sampling events thereafter that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or its 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 Defendant has 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 Defendant shall submit these progress reports to EPA and the State by the tenth day of the month following the period that they discuss following the lodging of this Consent Decree until EPA notifies the Settling Defendant pursuant to Paragraph 49.b of Section XIV (Certification of Completion). If requested by EPA, Settling Defendant shall also provide briefings for EPA to discuss the progress of the Work.

51. The Settling Defendant shall notify EPA of any change in the schedule described in the progress report for the performance

of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

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

33. Within 20 days of the onset of such an event, Settling Defendant shall furnish to Plaintiff a written report, signed by the Settling Defendant's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendant shall submit a report setting forth all actions taken in response thereto.

34. Settling Defendant shall submit two (2) copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendant shall simultaneously submit two (2) copies of all such plans, reports and data to the State.

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

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

36. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendant modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendant at least one notice of deficiency and an

opportunity to cure within thirty (30) days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

37. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 36(a), (b), or (c), Settling Defendant shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to its 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 36(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

38. a. Upon receipt of a notice of disapproval pursuant to Paragraph 36(d), Settling Defendant shall, within twenty-one (21) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 21-

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 40 and 41.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 36(d), Settling Defendant 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 Defendant of any liability for stipulated penalties under Section XX (Stipulated Penalties).

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

40. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendant shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendant

invokes 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.

41. 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

42. Within 20 days of lodging this Consent Decree, Settling Defendant and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated

is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendant's Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendant's Project Coordinator shall not be an attorney. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

43. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal 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 or 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.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

44. Within 30 days of entry of this Consent Decree, Settling Defendant shall establish and maintain financial security in the amount of $ 2.8 million in one or more of the following forms:

(a) A surety bond guaranteeing performance of the Work;

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

(c) A trust fund;

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

(e) A demonstration that the Settling Defendant satisfies the requirements of 40 C.F.R. Part 264.143(f).

45. If the Settling Defendant seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 44(d) of this Consent Decree, Settling Defendant shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Defendant seeks to demonstrate

its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 44(d) or (e), it shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, by May 31 of each year. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendant shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 44 of this Consent Decree. Settling Defendant's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

46. If Settling Defendant can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 44 above after entry of this Consent Decree, Settling Defendant may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Settling Defendant shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by

EPA. In the event of a dispute, Settling Defendant may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

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

XIV. CERTIFICATION OF COMPLETION

48. Pre-Final and Final Insepection

a. Within 15 working days after Settling Defendant determines that construction of the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Defendant shall schedule and conduct a pre-final inspection to be attended by Settling Defendant, EPA, and the State. Within 30 days following a pre-final inspection, the Settling Defendant shall submit a Pre-final inspection Report. If, after completion of the pre-final inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the construction of the

Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendant in writing of the activities that must be undertaken by Settling Defendant pursuant to this Consent Decree to complete construction of the Remedial Action. Provided, however, that EPA may only require Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. Within twenty (20) days of the completion of work identified in the Pre-Final Inspection Report, Settling Defendant shall conduct a Final Inspection.

49. <u>Completion of Remedial Action</u>

a. Within sixty (60) days of a successful Final Inspection, as determined by EPA in consultation with the State, the Settling Defendant shall submit a Completion of Construction Report requesting EPA approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions). The written report shall include as-built drawings signed and stamped by a professional engineer. In the report, a registered professional engineer and the Settling Defendant's Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of the Consent Decree, and that all performance standards have been met. The report shall contain the following statement, signed by a responsible corporate official of Settling Defendant or the Settling Defendant's 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 receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State,

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 Defendant in writing of the activities that must be undertaken by Settling Defendant pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards. Provided, however, that EPA may only require Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its 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 of Remedial Action and after a reasonable opportunity for review and

comment by the State, 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 Defendant. 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 Plaintiff). Certification of Completion of the Remedial Action shall not affect Settling Defendant's obligations under this Consent Decree.

XV. EMERGENCY RESPONSE

50. 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 Defendant shall, subject to Paragraph 51, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendant shall notify the EPA [Emergency Response Unit], Region V. Settling Defendant shall take such actions in

consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendant fails to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendant shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Reimbursement of Response Costs).

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

XVI. REIMBURSEMENT OF RESPONSE COSTS

52. Within 30 days of the effective date of this Consent Decree, Settling Defendant shall:

Pay to the EPA Hazardous Substance Superfund $400,000, in reimbursement of Past Response Costs, by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 1998 V 01081 the EPA Region and Site/Spill ID # 05BE and DOJ case number 90-11-2-1282. Payment shall be made in accordance with instructions provided to the Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of Ohio 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 Defendant shall send notice that such payment has been made to the United States as specified in Section XXVI (Notices and Submissions) and Howard Levin, Acting Section Chief, Program Accounting and Analysis Section, Comptroller Branch, U.S. EPA, MF-10J, 77 W. Jackson Blvd., Chicago, Ill. 60604.

53. Settling Defendant shall reimburse the EPA Hazardous Substance Superfund for all Future Response Costs not inconsistent with the National Contingency Plan. The United States will send Settling Defendant a bill requiring payment that includes an itemized cost summary and a DOJ cost summary document on a periodic

basis. Examples of documents which should be provided with the detailed costs summary include, but are not limited to, time sheets, travel vouchers, contractor charges and contract lab costs. Settling Defendant shall make all payments within 30 days of Settling Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 54. The Settling Defendant shall make all payments required by this Paragraph in the form of a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund" and referencing the EPA Region and Site/Spill ID #05BE, the DOJ case number 90-11-2-1282, and the name and address of the party making payment. The Settling Defendant shall send the check(s) to: Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673 and shall send copies of the check(s) to the United States as specified in Section XXVI (Notices and Submissions) and Howard Levin, Acting Section Chief, Program Accounting and Analysis Section, Comptroller Branch, U.S. EPA, MF-10J, 77 W. Jackson Blvd., Chicago, Ill. 60604.

54. Settling Defendant may contest payment of any Future Response Costs under Paragraph 53 if it determines that the United States has made an accounting error or if it alleges that a cost item that is included represents costs that are inconsistent with

the NCP, or if the cost item does not meet the definition of a Future Response Cost under this Consent Decree. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section 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 Defendant shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 53. In the event of an objection, Settling Defendant may attempt to resolve the dispute informally during the first 45 days after receipt of the bill. Within 45 days of the receipt of the bill, if Settling Defendant has contested payment of any Future Response Costs, and if the matter has not already been resolved, the Settling Defendant shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Ohio and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendant shall send to the United States, as provided in Section XXVI (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not

limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendant 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 Defendant shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 53. If the Settling Defendant prevails concerning any aspect of the contested costs, the Settling Defendant 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 54; Settling Defendant 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 Defendant's obligation to reimburse the United States for its Future Response Costs.

55. In the event that the payments required by Paragraph 52 are not made within 30 days of the effective date of this Consent

Decree or the payments required by Paragraph 53 are not made within 30 days of the Settling Defendant's receipt of the bill, Settling Defendant shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs under this Paragraph shall begin to accrue 30 days after the effective date of this Consent Decree. 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 Defendant's 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 Defendant's failure to make timely payments under this Section. The Settling Defendant shall make all payments required by this Paragraph in the manner described in Paragraph 53.

XVII. INDEMNIFICATION AND INSURANCE

56. a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendant as EPA's authorized representative under Section 104(e) of CERCLA. Settling Defendant shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of

Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendant as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendant agrees to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendant in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendant nor any such contractor shall be considered an agent of the United States .

b. The United States shall give Settling Defendant notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 56.a., and shall consult with

Settling Defendant prior to settling such claim.

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

58. a. Prior to lodging of this Consent Decree, Settling Defendant shall provide U.S. EPA with information to satisfy EPA as to its financial resources and its ability to provide the equivalent of comprehensive general liability insurance with limits of one(1) million dollars, combined single limit, and automobile liability insurance with limits of one (1) million dollars, combined single limit, naming the United States as an additional insured.

b. If at any time prior to the first anniversary of the receipt of EPA's Certification of Completion notice pursuant to Paragraph 49(b), any material change occurs in the financial resources of Settling Defendant such that it may no longer have the financial ability to assure its ability to provide the equivalent of comprehensive general liability insurance and automobile insurance with the limits noted in this paragraph, Settling Defendant shall promptly notify EPA. Plaintiff may then require Settling Defendant to obtain comprehensive general liability and automobile insurance with the limits set forth in this paragraph.

c. If at any time prior to the first anniversary of the receipt of EPA's Certificate of Completion notice regarding completion of the Remedial Action pursuant to Paragraph 49(b), Plaintiff obtains information regarding any material change in the financial resources of Settling Defendant that leads EPA to believe that the Settling Defendant may no longer have the financial ability to provide the equivalent of comprehensive general liability insurance with limits of one (1) million dollars, combined single limit, Plaintiff shall so notify Settling Defendant. Settling Defendant shall have sixty (60) days after receiving any such written notice to respond and provide corrected or supplemental information, or otherwise assure Plaintiff that

Settling Defendant does have the ability to provide the equivalent of comprehensive general liability insurance with limits of one (1) million dollars, combined single limit.

d. If Settling Defendant does not satisfactorily resolve Plaintiff's concerns that a material change has occurred in the financial resources of the Settling Defendant within sixty (60) days after receiving notice noted in subparagraph (c) above, Plaintiff may require Settling Defendant to obtain comprehensive general liability and automobile insurance with limits of one (1) million dollars, combined single limit naming as additional insured the United States.

e. For the duration of this Consent Decree, Settling Defendant shall satisfy, or shall ensure that its 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 Defendant in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendant shall provide to EPA certificates of such insurance and a copy of each insurance policy or certification of a self insurance program. Settling Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent

Decree. If Settling Defendant demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendant need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

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

60. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendant shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region V, within forty-eight hours (48) of when Settling Defendant first knew that the event might cause a delay. Within three (3) days thereafter, Settling Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendant's rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendant from

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

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

62. If the Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XIX (Dispute

Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 59 and 60, above. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

63. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendant that have not been disputed in accordance with this Section.

64. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of

informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

65. 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 Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendant. The Statement of Position shall specify the Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 66 or Paragraph 67.

b. Within fourteen (14) days after receipt of Settling Defendant's Statement of Position, EPA will serve on Settling Defendant its Statement of Position, including, but not limited to,

any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 66 or 67. Within seven (7) working days after receipt of EPA's Statement of Position, Settling Defendant may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendant as to whether dispute resolution should proceed under Paragraph 66 or 67, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 66 and 67.

66. 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 Defendant 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 Superfund Division, EPA Region V, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 66.a. This decision shall be binding upon the Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 66.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 66.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendant with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the

parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendant's motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Superfund Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 66.a.

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

a. Following receipt of Settling Defendant's Statement of Position submitted pursuant to Paragraph 65, the Director of the Superfund Division, EPA Region V, will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on the Settling Defendant unless, within 10 working days of receipt of the decision, the Settling Defendant files with the Court and serves on the parties a motion for

judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant's motion.

b. Notwithstanding Paragraph J 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.

68. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendant under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 77. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

69. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 70 and 71 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 Defendant shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree unless otherwise agreed between the parties for time extensions on deliverables.

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

b. For each day that the remedial action work is delayed the following stipulated penalties shall apply:

Penalty Per Violation Per Day	Period of Noncompliance
[illegible]	[illegible]
$3,000	Days 15+

For purposes of this paragraph, remedial action work deadlines shall be set forth specifically in this Consent Decree or any Work Plan (or attachment thereto) or other plan approved under this Consent Decree, the SOW, and any other 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.

71. The following stipulated penalties shall accrue per violation per day for failure to submit timely approvable reports or other written documents required by this Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	Days 1-14
$3,000	Days 15-30
$10,000	Days 31+

72. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 85 of Section XXI (Covenants Not to Sue by Plaintiff), Settling Defendant shall be liable for a stipulated penalty in the amount of $100,000.

73. 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 Defendant of any deficiency; (2) with respect to a decision by the Director of the Superfund Division, EPA Region V, under Paragraph 66.b. or 67.a. of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendant's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (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.

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

describe the noncompliance. EPA may send the Settling Defendant a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendant of a violation.

75. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the Settling Defendant's receipt from EPA of a demand for payment of the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section 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 Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #05BE, the DOJ Case Number 90-11-2-1282, 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 Howard Levin, Acting Section Chief, Program Accounting and Analysis Section, Comptroller Branch, U.S. EPA, MF-10J, 77 W. Jackson Blvd., Chicago, Illinois

60604.

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

77. Penalties shall continue to accrue as provided in Paragraph 73 during any dispute resolution period, but need not be paid until the following:

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

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

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days.

Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendant to the extent that it prevails.

78. a. If Settling Defendant fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendant shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 75.

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 Defendant's 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 the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

79. 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 PLAINTIFF

80. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 81, 82, and 84 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 52 of Section XVI (Reimbursement of Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 49.b of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendant and do not extend to any other person.

81. United States' Pre-certification reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or

in a new action, or to issue an administrative order seeking to compel Settling Defendant (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:

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

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

and 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.

82. United States' Post-certification reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

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

discovered, or

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

and 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.

83. For purposes of Paragraph 81, the information and the conditions known to EPA shall include only that information and those conditions known to EPA 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 82, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

84. 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 80. The United States reserves,

and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all other matters, including but not limited to, the following:

(1) claims based on a failure by Settling Defendant 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 Materials outside of the Site;

(3) liability for future disposal of Waste Material at the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA;

(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;

(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 14 (Modification of the SOW or Related Work Plans); and

(8) liability for river sediment remediation.

85. Work Takeover In the event EPA determines that Settling Defendant has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Defendant may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 66, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendant shall pay pursuant to Section XVI (Reimbursement of Response Costs).

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

XXII. COVENANTS BY SETTLING DEFENDANT

87. Covenant Not to Sue. Subject to the reservations in Paragraph 88, Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Site, and Past and Future Response Costs as defined herein or this Consent Decree, including, but not limited to:

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

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

c. any claims arising out of response activities at the Site, including claims based on EPA's selection of response actions, oversight of response activities or approval of plans for such activities.

88. The Settling Defendant reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal

injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendant's 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;

89. 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).

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

90. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a

signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

91. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendant is entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Decree. The "matters addressed" in the settlement are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or any other person with respect to the Site. The "matters addressed" in this settlement do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendant coming within the scope of such reservations.

92. The Settling Defendant agrees that with respect to any suit or claim for contribution brought by it for matters related to this

Consent Decree it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

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

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

XXIV. ACCESS TO INFORMATION

95. Settling Defendant shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its 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 Defendant shall also make available to EPA , for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

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

be given access to such documents or information without further notice to Settling Defendant.

b. The Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendant asserts such a privilege in lieu of providing documents, it shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information: and (6) the privilege asserted by Settling Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

97. 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

98. Until 10 years after the Settling Defendant's receipt of EPA's notification pursuant to Paragraph 49.b of Section XIV (Certification of Completion of the Remedial Action), the Settling Defendant shall preserve and retain all records and documents 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 or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Settling Defendant's receipt of EPA's notification pursuant to Paragraph 49.b of Section XIV (Certification of Completion), Settling Defendant shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

99. At the conclusion of this document retention period, Settling Defendant shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendant shall deliver any such records or documents to EPA. The Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other

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

100. The Settling Defendant hereby certifies 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 relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XXVI. NOTICES AND SUBMISSIONS

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

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DJ # 90-11-2-1282
and

Director, Superfund Division
United States Environmental Protection Agency
Region V
77 West Jackson
Chicago, Illinois 60604

As to EPA:

Thomas Short
EPA Project Coordinator
United States Environmental Protection Agency
Region V
77 West Jackson
Chicago, Illinois 60604

As to the State:

Christine Osborne
Site Coordinator
Ohio EPA
Division of Emergency and Remedial Response
Southeast District Office
2195 Front Street
Logan, Ohio 43138

As to the Settling Defendant:

John Jones
Project Manager
Reilly Industries, Inc.
300 N. Meridian Street
#1500
Indianapolis, Indiana 46204

XXVII. EFFECTIVE DATE

102. 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

103. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendant for the

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

XXIX. APPENDICES

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

"Appendix A" is the ROD.

"Appendix B" is the SOW.

"Appendix C1 and C2" are maps depicting the Site.

XXX. COMMUNITY RELATIONS

105. Settling Defendant shall propose to EPA its participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendant under the Plan. Settling Defendant shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Defendant 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 to

explain activities at or relating to the Site.

XXXI. MODIFICATION

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

107. Except as provided in Paragraph 14 ("Modification of the SOW or related Work Plans"), no material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Defendant, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendant.

108. 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

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

110. 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

111. Each undersigned representative of the Settling Defendant to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources 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.

112. The Settling Defendant hereby agrees not to oppose entry

of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendant in writing that it no longer supports entry of the Consent Decree.

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

SO ORDERED THIS 4th DAY OF September, 1998

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Reilly Industries, Inc., relating to the Reilly Tar & Chemical Corporation Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 6/12/98

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Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

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Region V
77 West Jackson
Chicago, Illinois 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Reilly Industries, Inc., relating to the Reilly Tar & Chemical Corporation Superfund Site.

FOR REILLY INDUSTRIES, INC.

Date: 02-09-1998

[Name -- Please Type] R. D. McNeeley
[Title -- Please Type] President
[Address -- Please Type] 300 N. Meridian St., #1500
Indianapolis, IN 46204

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

Name: Anne M. Frye
Title: Corporate Counsel
Address: 300 N. Meridian St., #1500, Indianapolis, IN 46204
Tel. Number: 317/248-6512

APPENDIX B

STATEMENT OF WORK FOR THE
REMEDIAL DESIGN AND REMEDIAL ACTION
REILLY TAR & CHEMICAL
TUSCARAWAS COUNTY, OHIO

I. PURPOSE

The Purpose of this Statement of Work ("SOW") is to set forth requirements for the implementation of the Remedial Action ("RA"), pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") Remedial Design ("RD")/RA Consent Decree ("Consent Decree"), and the Record of Decision ("ROD") for the Reilly Tar and Chemical Company Site ("Site") in Dover, Ohio, which was signed by the Region V Superfund Division Director on March 31, 1997. The Settling Defendant, Reilly Industries, shall comply with the ROD, the SOW, the approved RD Work Plan, the approved RA Work Plan, U.S. EPA Superfund RD and RA Guidance, and any additional guidance provided by U.S. EPA in submitting deliverables for, designing and implementing the RA at the Site.

II. DESCRIPTION OF THE REMEDIAL ACTION

The purpose of the RA is to prevent exposure to coal tar contamination in the soils, sediments, and groundwater, on-site, which have been determined by U.S. EPA in the Remedial Investigation to pose unacceptable risks to human health and the environment. Additionally, the purpose of the RA is to mitigate the off-site migration of contaminated perched groundwater from further contaminating the regional aquifer underlying the Site. Finally, the RA will monitor the shallow portion of the regional aquifer to ensure that natural attenuation is taking place, and will monitor the sediments of the Tuscarawas River to ensure that no negative impacts to the aquatic ecosystem are taking place.

The Settling Defendant shall design and implement the RA to meet the performance standards and specifications set forth in the ROD and this SOW for the design, construction, operation and maintenance of the RA. Performance standards shall include cleanup standards, standards of control, quality criteria and other substantive requirements, criteria or limitations set forth in the ROD, SOW, or Consent Decree, and all chemical-specific and action-specific Applicable or Relevant and Appropriate Requirements ("ARARs") for the RA.

1. Site Security

The Settling Defendant shall maintain the fence at the Site , until Certification of Completion of the RA is granted by U.S. EPA, to prevent vandalism to the Site. This maintenance shall include repair to the existing fences, where necessary, to maintain proper security. Warning signs shall be posted and shall state that the area is hazardous due to chemicals in the soils and ground

water, which pose a risk to public health through direct contact with soils and ingestion of ground water. The signs shall also provide a telephone number to call for further information. The Settling Defendant shall inspect the fences as part of each routine site visit (i.e. monthly O&M, quarterly sampling, daily while on site for construction) and any necessary repairs shall be reported to U.S. EPA in writing and conducted by the Settling Defendant. Settling Defendants shall undertake all necessary repairs within 5 working days of discovery of the need of repair and said repairs shall be completed within 15 working days thereafter.

2. Excavation and Off-site Thermal Treatment of Soils and Sediments with B(a)P in Excess of 100ppm

The Settling Defendant shall conduct Site preparation, as appropriate, as determined by U.S. EPA, in consultation with the Ohio Environmental Protection Agency ("OEPA") for implementation of the remedy as specified in the ROD and this SOW. The Settling Defendant shall propose a method to handle the trees and debris for approval by the U.S. EPA, in consultation with OEPA. The Settling Defendant shall take necessary steps to insure that adequate electrical power and other necessary utilities are provided in order to implement the remedy.

The Settling Defendant shall excavate all surficial soils (approximately 2,730 cubic yards), surface water drainage ditch sediment (approximately 120 cubic yards), and impacted perched zone material from the collection trench excavation, which are contaminated with Benzo(a)Pyrene ("B(a)P") at a concentration greater than 100 ppm. The Settling Defendant shall dispose of said soils and sediments off-site for thermal destruction. To the extent that the soils and sediments are RCRA Characteristic Hazardous Waste, off-site disposal must comply with Boiler and Industrial Furnace regulations, 40 CFR Part 266 and with U.S. EPA's off-site Rule, 58 Fed Reg 49200 (September 22, 1993), for disposal in an approved RCRA Subtitle C landfill. Additionally, transportation and storage of these materials shall comply with 40 CFR 262, and 263. The Settling Defendant shall line the surface water ditch to eliminate the hydraulic connection between the surface water and perched zone.

3. Excavation and On-Site Disposal of Surface Water Drainage Ditch Sediments, Surface Soils, Impacted Perched Zone Material With B(a)P Less Than 100 ppm and Greater Than 5 ppm

The Settling Defendant shall excavate and place surficial soils and and surface water drainage ditch sediments with B(a)P less than 100 ppm and greater than 5 ppm (approximately 5500 cubic yards) in the building foundation. The cracks in the floors and walls of the building foundation shall be sealed to ensure the integrity of the structure. The Site shall be grubbed and graded. Soil, concrete and/or slag removed to facilitate grading activities shall be placed in the building foundation to the extent that capacity allows. Any excess soils not placed in the building foundation shall be placed in an off-site landfill, in accordance with 40 CFR 261 (Subtitle D) and Ohio Administrative Code Section 3745-27-08, Ohio Solid Waste Regulations. The building

foundation shall be capped in accordance with 40 CFR 261 (Subtitle D) and Ohio Administrative Code Section 3745-27-08, Ohio Solid Waste Regulations, and the remainder of the Site shall be covered with soil and vegetated.

4. Off-site Disposal or Recycle Tarry Materials

The Settling Defendant shall conduct one of two possible remedial response actions with respect to the surficial tarry materials on-site:

The Settling Defendant shall excavate and solidify tarry materials with lime, cement and/or fly ash and shall dispose off-site in a RCRA Subtitle C landfill. To the extent that the tarry materials are RCRA Characteristic Hazardous Waste, off-site disposal must comply with Land Ban regulations pursuant to 40 CFR Section 268 Subpart D, and with U.S. EPA's off-site Rule, 58 Fed Reg 49200 (September 22, 1993), for disposal in an approved RCRA Subtitle C landfill. Transportation and storage of these materials would need to comply with 40 CFR 262, and 263 as well, or;

The Settling Defendant shall excavate tarry materials, and recycle materials for use either as a coal tar feedstock, as an off-spec fuel, or other acceptable method, as determined by U.S. EPA, in consultation with OEPA. Depending on the method of recycling, the Settling Defendant may seek approval from U.S. EPA, in consultation with OEPA, to make use of any exemptions or exclusions from the definition of solid waste under the existing RCRA regulations. The recycling option will depend largely on the ability to handle and segregate the material from the soil and sediments. To the extent that tarry materials are RCRA Characteristic Hazardous Waste, recycling of these materials must comply with Ohio Administrative Code Section 3745-50-311 through 3745-50-315, which govern criteria by which recycling variances to classification as a waste are granted.

5. Hydraulic Control and Collection of Perched Ground Water

The Settling Defendant shall install a horizontal trench into the perched zone to the underlying clay (a depth of approximately 15 to 18 feet below the surface approximately 863 feet MSL) to recover perched ground water and halt the migration of perched ground water into the regional aquifer. The trench shall be located in the central portion of the Site and shall be approximately 400 linear feet in length. The trench shall be sloped slightly to maximize the recovery of perched water. The Settling Defendants shall pump perched water to an oil/water separator and then discharge the water to the sanitary sewer line that leads to the City of Dover POTW. The Settling Defendant shall obtain a permit from the City of Dover to discharge the water recovered from the trench to the POTW.

Discharge to the POTW must comply with the POTW pretreatment program, including POTW-specific pollutants, pursuant to 40 CFR 403.5: Discharge to Publicly Owned Treatment Works. The permit will establish appropriate pre-treatment limits pursuant to 40 CFR 403. Any

waste to be discharged to the POTW will, if necessary, be treated to satisfy the standards set forth in the permit, prior to discharge. The discharge from the collection trench is expected to be approximately 2,900 to 7,200 gallons per day.

The Settling Defendant shall implement a monitoring program for the extraction system as identified in the U.S. EPA and OEPA approved Operation and Maintenance ("O&M") Plan. The monitoring program shall be designed to meet the POTW requirements and to detect any conditions that may interfere with the proper operation and function of the perched groundwater extraction system. System monitoring shall include collection, field and laboratory analysis of effluent samples to determine the need for pre-treatment prior to discharge to the POTW. Once the RA is determined to be both operational and functional, the Settling Defendant shall follow the sampling procedures and frequencies established in the U.S. EPA and OEPA approved O & M Plan.

6. Natural Attenuation and Long-Term Monitoring of Shallow Ground Water

The Settling Defendant shall implement a groundwater monitoring program as identified in the U.S. EPA and OEPA approved RA Workplan required as a part of this SOW. The degradation and migration of chemicals of potential concern ("CPC") shall be monitored in the shallow ground water to assess the effectiveness of natural attenuation. The groundwater monitoring program shall be designed by the Settling Defendant to detect changes in the chemical concentrations of the groundwater. Upon U.S. EPA and OEPA approval of the RA Workplan, the Settling Defendant shall immediately install and sample the monitoring wells identified in the approved RA Workplan. The Settling Defendant shall then sample these monitoring wells on a quarterly basis, and may seek permission from U.S. EPA, in consultation with OEPA, for less frequent sampling as supporting data provides. Settling Defendants shall submit annual groundwater monitoring reports to U.S. EPA and OEPA.

Groundwater samples shall be analyzed for the parameters identified in the approved RD workplan. With U.S. EPA and OEPA approval, the Settling Defendant may modify the groundwater monitoring program at any time to accommodate changing conditions or informational needs. If additional information indicates that the groundwater monitoring program is inadequate, U.S. EPA, in consultation with OEPA, may require additional groundwater monitoring wells and laboratory analysis of additional sampling parameters.

7. Tuscarawas River Sediments Ecological Risk Assessment

The Settling Defendant shall undertake an ecological risk assessment for river sediments in the outfall and immediately downstream of the outfall to ensure that there are no risks to the aquatic ecosystem. Settling Defendants shall report the results of this study to USEPA and OEPA

8. Air Monitoring

The potential for air emissions from excavation of soils and sediments shall be estimated during the RD. Standards for these emissions will comply with all Federal and State standards. The need for emissions control will be determined during RD based on the estimated emissions and the applicable standards. The Settling Defendant shall monitor emissions as necessary, as determined by U.S. EPA, in consultation with OEPA, during implementation of the remedy. If air emissions exceed Federal or State standards, the Settling Defendant shall take corrective measures as developed in the Contingency Plan. Residuals from air emission control processes shall be treated and/or disposed of in accordance with all Federal and State standards as outlined in the Contingency Plan.

III. SCOPE OF REMEDIAL DESIGN AND REMEDIAL ACTION

The RD/RA Scope of Work shall consist of five tasks. All plans are subject to approval by U.S. EPA, in consultation with OEPA.

Task 1: RD Work Plan

A. Pre-design Studies Plan: 1) Pumping Test Plan (if necessary, as determined by U.S. EPA in consultation with OEPA), 2) Perched Aquifer Pre-treatment Plan (if necessary, as determined by U.S. EPA in consultation with OEPA) (cross referenced to the existing Field Sampling Plan ("FSP"), Quality Assurance Project Plan ("QAPP"), and Health and Safety Plan ("HSP"), with modifications as appropriate.)

B. Plan for Satisfaction of Permitting Requirements

Task 2: RD Phases

A. Hydrogeologic Modeling (if necessary, as determined by U.S. EPA in consultation with OEPA)
B. Pumping Test and Treatability Tests (if necessary, as determined by U.S. EPA in consultation with OEPA)
C. Draft Design (50%)
D. Final Design (100%)

Task 3: Final RA Work Plan

Task 4: RA/ Construction

A. [illegible]

B. Pre-Final Inspection

C. Final Inspection
D. Completion of RA Report
E. Monthly Progress Reports

Task 5: Operation and Maintenance

Task 6: Performance Monitoring

Task 7: Ecological Risk Assessment

Task 1: RD WORK PLAN

The RD Work Plan shall include, at a minimum, the following Plans: (A) Pre-Design Studies Plan (if necessary, as determined by U.S. EPA in consultation with OEPA); (B) Plan for Satisfaction of Permitting Requirements.

The Settling Defendant shall submit a RD Work Plan, which shall document the overall management strategy for performing the design (including pumping tests and perched aquifer pre-treatment tests) for U.S. EPA and OEPA review and approval. The plan shall document the responsibility and authority of all organizations and key personnel involved with the implementation of the workplan and shall include a description of qualifications of key personnel directing the RD/RA, including contractor personnel. The work plan shall identify additional data needs, if any, necessary to initiate or complete the RD. The work plan shall also contain a schedule of RD activities. The Settling Defendant shall submit a draft RD Work Plan according to the schedule identified in the Submission Summary (Part V of this SOW). Document review shall be in accordance with Section XI of the Consent Decree. The Settling Defendant shall submit a final RD Work Plan addressing U.S. EPA and OEPA comments on the Draft Work Plan according to the schedule identified in the Submission Summary.

This RD Work Plan shall require pre-design studies to provide information necessary to fully implement the Remedial Design and Remedial Action. The Settling Defendants shall implement the pre-design work in accordance with the final RD Work Plan. The results of the pre-design studies shall be included with the 50% RD submittal.

A. Pre-Design Studies Plan (if necessary, as determined by U.S. EPA in consultation with OEPA).

This plan will describe the objectives of the pumping test(s) and pre-treatment tests (if necessary, as determined by U.S. EPA in consultation with OEPA), and the procedures that will be used to attain those objectives. The plan shall include the following two components:

1. Pumping Test Plan
   To include, at a minimum, the following:

a) Objectives
b) Location of pumping well(s) and monitoring wells
c) Installation of pumping well(s) and monitoring wells
d) Pumping rate, duration, and data collection procedures
e) Data reduction procedures
f) Treatment/discharge of water generated from test
g) Schedule

2. Perched Aquifer Pre-Treatment Plan (if necessary, as determined by U.S. EPA in consultation with OEPA)

For each treatment process to be tested, the Plan will describe, at a minimum, the following:

a) Brief description of treatment process
b) Objective of test
c) Scale of test (i.e. screening level, bench-scale or pilot-scale)
d) Source of water to be tested; sampling procedures
e) Data collection procedures
f) Data reduction procedures
g) Schedule

The test plan(s) will be prepared in accordance with U.S. EPA's "Guide for Conducting Treatability Studies under CERCLA (Interim Final)" (EPA/540/2-89/058).

B. Plan for Satisfaction of Permitting Requirements

Construction and operation of this remedy will require permits or permit-equivalencies. The latter requirement pertains to on-site actions, where actual permits are not required. For on-site RAs, only the substantive requirements of permitting procedures must be fulfilled; pursuant to Section 121(e)(1) of CERCLA, no Federal, State, or local permit shall be required for the portion of any removal or RA conducted entirely on-site, where such RA is selected and carried out in compliance with this Section.

This plan will include:

(1) Permit requirements

For each permit required, this Plan will indicate the component of the RA to be permitted, list the Agency granting the permit, briefly describe the information to be submitted to obtain the permit and/or reference the permit application form, and indicate the point in the RD process when the permit application will be submitted. Submittal of this Plan to the U.S. EPA and OEPA will only constitute advance notice to those Agencies of permit applications to be submitted.

(2) Permit equivalencies

For each permit-equivalency, this Plan will indicate the component of the RA involved, list the Agency reviewing the permit-equivalency, briefly describe the information to be submitted to the Agency, and indicate the point in the RD process when the information will be submitted. Submittal of this Plan to U.S. EPA and the OEPA will only constitute advance notice to those Agencies of permit equivalencies to be submitted.

Task 2: REMEDIAL DESIGN PHASES

The Settling Defendant shall prepare construction plans and specifications to implement the RA at the Site as described in the ROD and this SOW. Plans and specifications shall be submitted in accordance with the schedule set forth in Section V below. All plans and specifications shall be developed in accordance with U.S. EPA's Superfund RD and RA Guidance (OSWER Directive No. 9355.0-4A) and shall demonstrate that the RA shall meet all objectives of the ROD, the CD and this SOW, including all Cleanup and Performance Standards. The Settling Defendant shall meet regularly with U.S. EPA and OEPA to discuss design issues.

A. Pumping Test and Pre-Treatment Tests (if necessary, as determined by U.S. EPA in consultation with OEPA)

The Settling Defendant shall perform the pumping test(s) and pre-treatment test(s) in accordance with the U.S. EPA and OEPA approved Pre-Design Studies Plan. The Settling Defendant will document the results and conclusions of the testing program in a Technical Memoranda to be submitted to the U.S. EPA and OEPA concurrently with the Draft Design submittal.

B. Draft Design

The Settling Defendant shall submit a Draft Design representing a design effort that is approximately 50% complete, in accordance with the schedule set forth in Section V. The Draft Design submittal shall include or discuss, at a minimum, the following:

- Results of hydrogeologic modeling, pump tests, bench scale and pilot scale treatability testing, and additional field testing or sampling, if conducted;
- Preliminary plans, drawings, and sketches, including design calculations;
- General concept design assumptions.
- Outline of required bid and performance specifications;
- Real estate, easement, and permit requirements;
- Preliminary construction schedule, including contracting strategy;

- Draft Performance Standards Verification Plan (including the FSP/QAPP);

- Draft Construction Quality Assurance Plan ("CQAP");

- Draft HSP;

- Procedures and plans for the decontamination of equipment and the disposal of contaminated materials during construction;

- Draft Operation and Maintenance ("O&M") Plan. The O&M Plan shall contain long term monitoring and operation requirements, including requirements for demonstrating compliance with Applicable or Relevant and Appropriate Requirements ("ARARs");

- Draft Contingency Plan.

C. Final Design

The Settling Defendant shall submit the 100% Final Design, in accordance with the Schedule set forth in Section V. The Final Design shall fully address all comments made to the Draft design submittal. The Final Design shall include reproducible drawings and specifications suitable for bid advertisement. The Design submittal shall include those elements listed for the Draft Design, as well as the following:

- Final Performance Standards Verification Plan (including the final FSP/QAPP);

- Final CQAP;

- Final HSP;

- Final O&M Plan, including long term monitoring and operation requirements, including requirements for demonstrating compliance with ARARs;

- Final Contingency Plan;

- Capital Operation and Maintenance Cost Estimate. This cost estimate shall refine the FS cost estimate to reflect the detail presented in the Final Design.

- The Final Project Schedule for the construction and implementation of the RA which identifies timing for initiation and completion of all critical path tasks will be submitted as part of the Final Design and Final RA Work Plan and shall include specific dates for completion of the project and major milestones.

Task 3: RA Work Plan

The Settling Defendant shall submit a RA Work plan in accordance with Section VI and paragraph 12 Of the Consent Decree, and Section V of this SOW, which includes a detailed description of the remediation and construction activities, for review and approval in accordance with the terms of the Consent Decree. The RA Work Plan shall include a project schedule for each major activity and submission of deliverables generated during the RA.

Task 4: RA Construction

The Settling Defendant shall implement the RA as detailed in the approved Final Design and the approved RA Work Plan. The following activities shall be completed in constructing the RA.

A. Preconstruction Inspection and Meeting:

The Settling Defendant shall participate with U.S. EPA and OEPA in a Preconstruction Inspection and Meeting to:

1. Review methods for documenting and reporting inspection data;

2. Review methods for distributing and storing documents and reports;

3. Review work area security and safety protocol;

4. Review the U.S. EPA approved construction quality assurance plan to ensure that Site-specific considerations are addressed; and,

5. Conduct a Site walk-around to verify that the design criteria, plans, and specifications are understood and to review material and equipment storage locations.

The Preconstruction Inspection and Meeting shall be documented by a designated person and minutes shall be transmitted to all parties.

B. Pre-final Inspection:

The Settling Defendant shall notify U.S. EPA and OEPA at least two weeks prior to the completion of the RA, so that a pre-final inspection can be conducted within 10 working days after the completion of the RA. The pre-final inspection shall consist of a walk-through inspection of the Solid Waste Cap, the perched groundwater extraction system, the groundwater pre-treatment system (if necessary, as determined by U.S. EPA in consultation with OEPA), and the regional groundwater monitoring system. The purpose of the inspection is to determine whether the project is complete and consistent with the contract documents and the U.S. EPA and OEPA approved RA. Any outstanding RA items discovered during the inspection shall be

identified and noted. The Settling Defendant shall submit a pre-final inspection report in accordance with the schedule set forth in Section V. The pre-final inspection report shall outline the outstanding RA items, actions required to resolve items, completion dates for these items, and a proposed date for final inspection.

C. Final Inspection:

The Settling Defendant shall notify the U.S. EPA and OEPA so that a final inspection can be conducted within 20 working days after completion of any outstanding RA items identified in the pre-final inspection report. The final inspection shall consist of a walk-through inspection by U.S. EPA, OEPA and the Settling Defendant. The pre-final inspection report shall be used as a checklist during the final inspection focusing on the outstanding construction items identified in the pre-final inspection. Confirmation shall be made that outstanding items have been resolved.

D. Completion of RA Report:

This Report shall be submitted by the Settling Defendant when the RA is complete, and routine O & M is underway.

The Settling Defendant shall operationally test the pre-treatment equipment (if necessary, as determined by U.S. EPA in consultation with OEPA). In the Completion of RA Report, the Settling Defendant shall certify that all performance standards have been met, and that the equipment has performed to meet the purpose and intent of the specifications. Retesting shall be completed where deficiencies are revealed.

Within 60 days of a successful final inspection, the Settling Defendant shall submit a Completion of RA report. A registered professional engineer and the Settling Defendant's Project Coordinator shall state that the RA has been completed in full satisfaction of the requirements of this Consent Decree in the Report. 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 responsible corporate official of the Settling Defendant or the Settling Defendant's 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 there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

E. Monthly Progress Reports:

The Settling Defendant shall submit Monthly Progress Reports during RA construction activities and in conjunction with routine sampling events thereafter.

Task 5 Operation and Maintenance

The Settling Defendant shall prepare an O & M Plan to cover both implementation and long term maintenance of the RA. An initial Draft O & M Plan shall be submitted at the time of the Draft Design and the Draft RA Work Plan submission. The final O & M Plan shall be submitted to U.S. EPA and OEPA prior to the pre-final construction inspection, in accordance with the approved construction schedule. The Plan shall be composed of the following elements:

1. Description of equipment

2. Description of normal operation and maintenance;

   a. Description of tasks for operation;
   b. Description of tasks for maintenance;
   c. Description of prescribed treatment or operation conditions; and
   d. Schedule showing frequency of each O&M task.

3. Description of potential operating problems;

   a. Description and analysis of potential operation problems;
   b. Sources of information regarding problems; (such as providing of insight or professional experience on similar projects), and
   c. Common and/or anticipated remedies. (This should include discussion of advisable replacement parts inventories.)

4. Description of routine monitoring and laboratory testing;

   a. Description of tasks required to monitor the operation of the perched groundwater extraction and pre-treatment system;
   b. Description of required data collection, laboratory tests and their interpretation;
   c. Required quality assurance and quality control;
   d. Schedule of monitoring frequency and procedures for a petition to U.S. EPA to reduce the frequency of or discontinue monitoring; and
   e. Description of verification sampling procedures if pre-treatment standards are exceeded in routine monitoring.
   f. Acceptable levels or ranges of levels for parameters being monitored.

5. Description of alternate O&M;

   a. Should systems fail, alternate procedures to prevent releases or threatened releases of hazardous substances, pollutants, or contaminants which may endanger public health and the environment or exceed cleanup standards; and
   b. Analysis of vulnerability and additional resource requirement should a failure

occur.

6. Performance Standards Verification Plan

a. Procedures for sampling soils and sediments to determine off-site treatment or on-site containment remediation;
b. Procedures for verifying that remaining soils have < 5ppm B(a)P.
c. Procedures for monitoring discharge of groundwater;
d. Procedures for monitoring air emissions;
e. Procedures for monitoring hydraulic and chemical parameters in the aquifer;
f. Required quality assurance and quality control;
g. Summary of applicable performance standards (e.g. discharge limits);
h. Schedule of expected long term monitoring frequency and procedures for a petition to U.S. EPA to reduce the frequency of or discontinue monitoring;
I. Description of verification sampling procedures if performance standards are exceeded in routine monitoring;

7. Corrective Action;

a. Description of corrective action to be implemented in the event that cleanup or performance standards are exceeded; and
b. Schedule for implementing these corrective actions;

8. Safety plan;

a. Description of precautions, of necessary equipment, etc., for Site personnel; and
b. Safety tasks required in event of systems failure.

9. Records and reporting mechanisms required.

a. Operating logs;
b. Laboratory records;
c. Records for operating costs;
d. Mechanism for reporting emergencies;
e. Personnel and maintenance records; and
f. Monthly/annual reports to Federal/State agencies.

Task 6 Performance Monitoring

Performance monitoring shall be conducted to ensure that all Performance Standards are met. Such monitoring shall be performed in accordance with the Performance Standards Verification Plan included in the O & M Plan

Task 7: Ecological Risk Assessment

The ecological risk assessment of the outfall sediments in the Tuscarawas River shall follow USEPA Guidance EPA/540/1-89/001, "Risk assessment guidance for Superfund: Volume II - environmental evaluation manual. Interim Final. U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, Washington, D.C.

IV. CONTENT OF SUPPORTING PLANS

The documents listed in Section III-- the QAPP, the FSP, the HSP, the Contingency Plan and the Construction Quality Assurance Plan ("CQAP") -- are documents which must be prepared and submitted as outlined in this SOW. The following section describes the required contents of each of these supporting plans.

U.S. EPA, in consultation with OEPA, in its sole discretion, may authorize the Settling Defendant to use or modify existing plans approved for remedial investigation field work to develop the QAPP, the FSP, and the HSP for RD and RA. Because similar tasks will be performed at different parts in the RD/RA process, a single QAPP, a single FSP, and a single HSP may be prepared. These documents would be amended as necessary to reflect successive tasks. Such amendments may be submitted to U.S. EPA and OEPA as addenda to the original plan(s).

A. Quality Assurance Project Plan

The Settling Defendant shall develop a Site specific QAPP, covering sample analysis and data handling for samples collected in all phases of future Site work, based upon the Consent Decree and guidance provided by U.S. EPA. The QAPP shall be consistent with the requirements of the U.S. EPA Contract Laboratory Program ("CLP") for laboratories proposed outside the CLP. The QAPP shall at a minimum include:

Project Description
- Facility Location History
- Past Data Collection Activity
- Project Scope
- Sample Network Design
- Parameters to be Tested and Frequency
- Project Schedule

Project Organization and Responsibility

Quality Assurance Objectives for Measurement Data
- Level of Quality Control Effort
- Accuracy, Precision and Sensitivity of Analysis

- Completeness, Representativeness and Comparability

Sampling Procedures

Sample Custody
- Field Specific Custody Procedures
- Laboratory Chain of Custody Procedures

Calibration Procedures and Frequency
- Field Instruments/Equipment
- Laboratory Instruments

Analytical Procedures
- Non-Contract Laboratory Program Analytical Methods
- Field Screening and Analytical Protocol
- Laboratory Procedures

Internal Quality Control Checks
- Field Measurements
- Laboratory Analysis

Data Reduction, Validation, and Reporting
- Data Reduction
- Data Validation
- Data Reporting

Performance and System Audits
- Internal Audits of Field Activity
- Internal Laboratory Audit
- External Field Audit
- External Laboratory Audit

Preventive Maintenance
- Routine Preventive Maintenance Procedures and Schedules
- Field Instruments/Equipment
- Laboratory Instruments

Specific Routine Procedures to Assess Data Precision, Accuracy, and Completeness
- Field Measurement Data
- Laboratory Data

Corrective Action
- Sample Collection/Field Measurement

•Laboratory Analysis

Quality Assurance Reports to Management

The Settling Defendant shall attend a pre-QAPP meeting with U.S. EPA and OEPA. The Settling Defendant shall submit a draft QAPP to U.S. EPA and OEPA for review and approval.

B. Health and Safety Plan

The Settling Defendant shall develop an HSP which is designed to protect on-site personnel and area residents from physical, chemical and all other hazards posed by activities associated with this interim RA. The HSP shall develop the performance levels and criteria necessary to address the following areas:

Facility Description
Personnel
Levels of Protection
Safe work practices and safe guards
Medical surveillance
Personal and environmental air monitoring
Personal protective equipment
Personal hygiene
Decontamination - personal and equipment
Site work zones
Contaminant control
Contingency and emergency planning
Logs, reports and record keeping

The HSP shall follow U.S. EPA guidance and all OSHA requirements as outlined in 29 CFR Parts 1910 and 1926.

C. Field Sampling Plan

The Settling Defendants shall develop a field sampling plan (as described in " Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA," October 1988). The Field Sampling Plan should supplement the QAPP and address all sample collection activities.

D. Contingency Plan

The Settling Defendant shall submit a Contingency Plan describing procedures to be used in the event of an accident or emergency at the Site. The Draft Contingency Plan shall be submitted with the Draft Design submittal and the final Contingency Plan shall be submitted with the Final

Design submittal. The Contingency Plan shall include, at a minimum, the following:

1. Name of the person or entity responsible for responding in the event of an emergency incident.

2. Plan and date(s) for meeting(s) with the local community, including local, State and Federal agencies involved with the cleanup, as well as local emergency squads and hospitals.

3. First aid medical information.

4. Spill Prevention, Control, and Countermeasures (SPCC) Plan, as specified in 40 CFR Part 109 describing measures to prevent and contingency plans for potential spills and discharges from materials handling and transportation.

E. Construction Quality Assurance Plan

The Settling Defendant shall submit a CQAP which describes the Site specific components of the quality assurance program which shall ensure that the completed project meets or exceeds all design criteria, plans, and specifications. The draft CQAP shall be submitted with the Draft Design submittal and the final CQAP shall be submitted with the Final Design submittal. The CQAP shall contain, at a minimum, the following elements:

1. Responsibilities and authorities of all organizations and key personnel involved in the design and construction of the Interim RA.

2. Qualifications of the Quality Assurance Official to demonstrate that he or she possesses the training and experience necessary to fulfill his or her identified responsibilities.

3. Protocols for sampling and testing used to monitor construction.

4. Identification of proposed quality assurance sampling activities including the sample size, locations, frequency of testing, acceptance and rejection data sheets, problem identification and corrective measures reports, evaluation reports, acceptance reports, and final documentation. A description of the provisions for final storage of all records consistent with the requirements of the Consent Decree shall be included.

5. Reporting requirements for CQA activities shall be described in detail in the CQA plan. This shall include such items as daily summary reports, inspection data sheets, problem identification and corrective measures reports, design acceptance reports, and final documentation. Provisions for the final storage of all records shall be presented in the CQA plan.

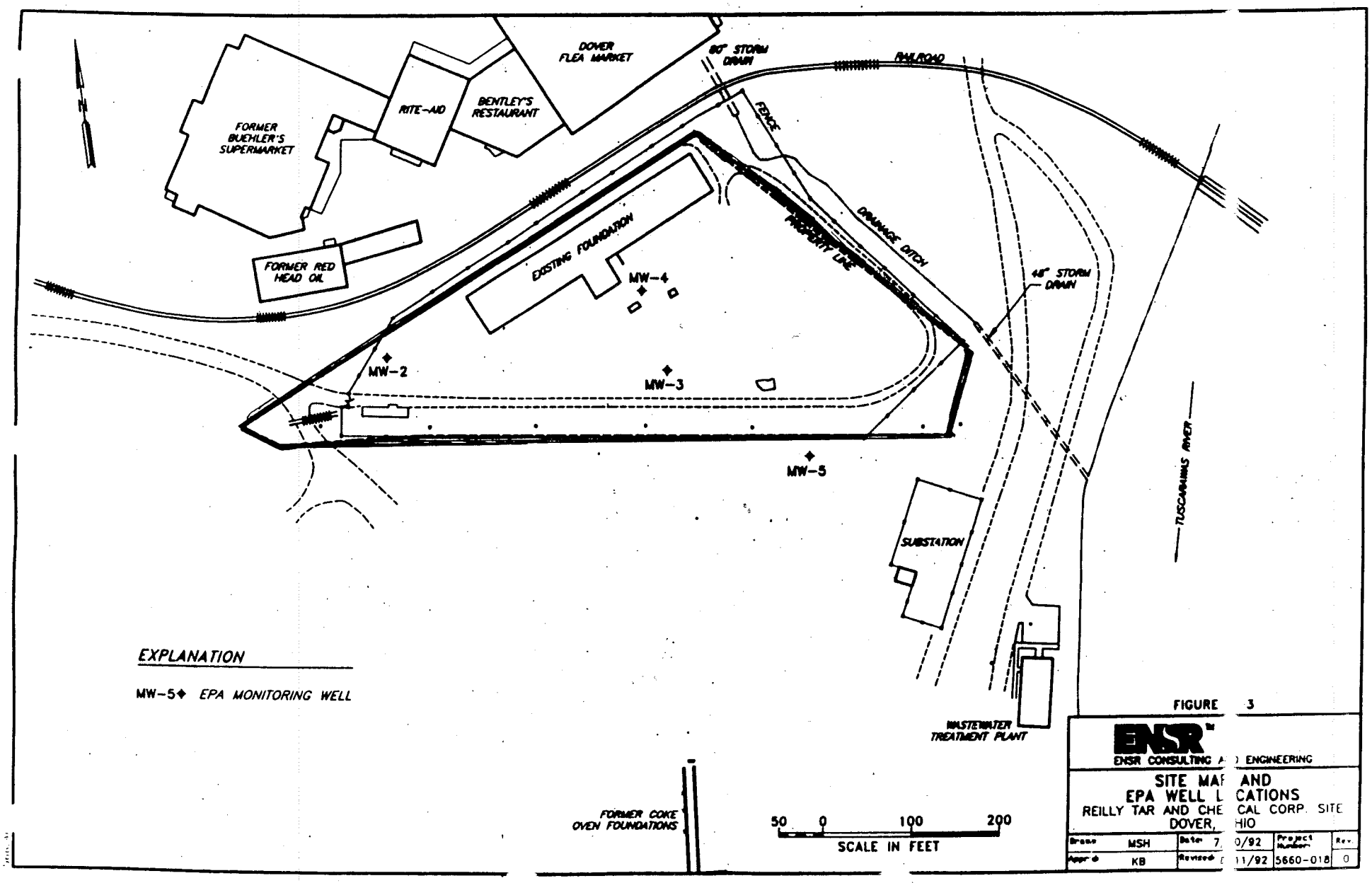
V. SUBMISSION SUMMARY FOR MAJOR DELIVERABLES/SCHEDULE

A summary of the reporting requirements contained in this SOW is presented below:

1.	RD Work Plan	Thirty (30) days after notice of authorization to proceed with RD
2.	Draft Design (50%)	Sixty (60) days after U.S. EPA, in consultation with OEPA approval of final RD Work Plan
3.	Final Design (100%)	Forty (40) days after receipt of comments on the Draft Design
4.	RA Work Plan	Thirty (30) days after approval of Final Design
5.	Award RA Contract(s)	Thirty (30) days after notice of authorization to proceed with RA
6.	Pre-Construction Inspection and Meeting	10 working days after award of RA contract(s)
7.	Initiate RA	10 working days after pre-construction Inspection and meeting
8.	Pre-final Inspection	No later than 15 working days after notice of preliminary determination of completion of RA
9.	Final O&M Plan	No later than pre-final inspection
10.	Pre-final Inspection Report	30 days after pre-final inspection
11.	Final Inspection	20 days after completion of work identified in Pre-final Inspection Report
12.	Completion of Remedial Action Report	60 days after a successful final inspection

APPENDIX C1

APPENDIX C1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RITE-AID
BENTLEY'S RESTAURANT
DOVER FLEA MARKET
60" STORM DRAIN
RAILROAD
FENCE
DRAINAGE DITCH
PROPERTY LINE
EXISTING FOUNDATION
FORMER RED HEAD OIL
MW-4
MW-2
MW-3
MW-5
48" STORM DRAIN
SUBSTATION
TUSCARAWAS RIVER
WASTEWATER TREATMENT PLANT
FORMER COKE OVEN FOUNDATIONS
EXPLANATION
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FIGURE 3
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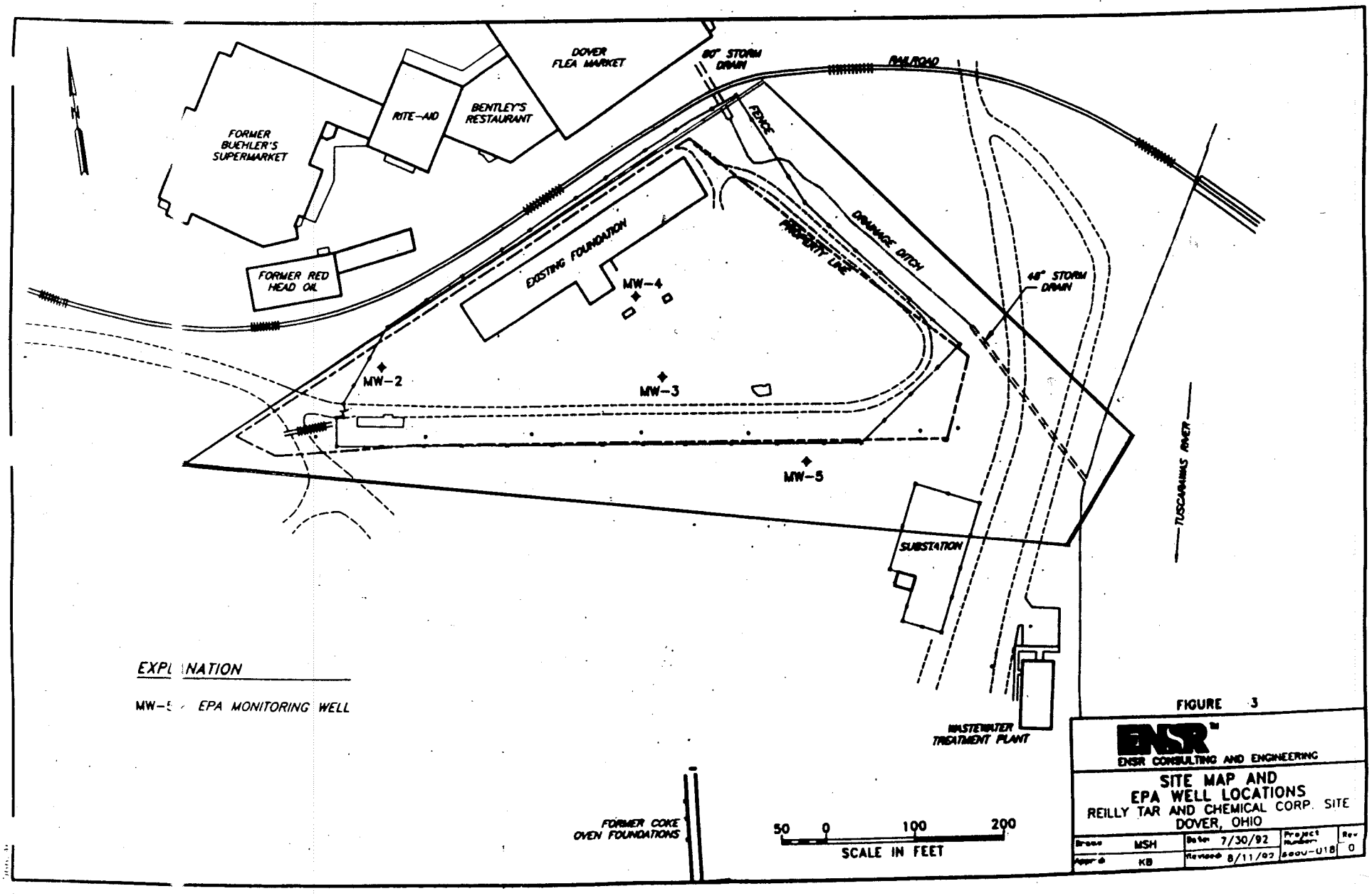
APPENDIX C2

APPENDIX C2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MW-5 EPA MONITORING WELL
FIGURE 3
ENSR CONSULTING AND ENGINEERING
SITE MAP AND
EPA WELL LOCATIONS
REILLY TAR AND CHEMICAL CORP. SITE
DOVER, OHIO
Drawn MSH
Date 7/30/92
Project Number 5000-018
Rev 0
Approved KB
Revised 8/11/92