03-2011-7089 entered 10/16/12

(CERCLA)

Site: Big Johns Salvage

FILED

OCT 10 2012

U.S. DISTRICT COURT
CLARKSBURG, WV 26301

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,	
Plaintiff,	
and	
STATE OF WEST VIRGINIA,	
Intervenor-Plaintiff,	**Civil Action No. 1: 08CV124**
v.	
EXXON MOBIL CORPORATION,	
Defendant, and	
VERTELLUS SPECIALTIES INC. and CBS CORPORATION,	
Intervenor-Defendants.	

CONSENT DECREE

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I. BACKGROUND

This Background Section constitutes a brief overview of the Big John's Salvage – Hoult Road Superfund Site ("BJS Site") solely for context and is not intended to be a comprehensive description of the case history.

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, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607.

B. The United States in its complaint seeks:

1. Reimbursement of response costs incurred by the United States, together with accrued Interest, in connection with the BJS Site located in Fairmont, West Virginia; and

2. Performance and funding of removal activities as set forth in the Action Memorandum by Defendants at the BJS 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) of CERCLA, 42 U.S.C. § 9621(f), EPA coordinated investigations and response action planning, and notified the State of West Virginia ("State") of negotiations with Defendant and Intervenor-Defendants regarding the implementation of the response actions at the BJS Site. EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. Defendant Exxon Mobil Corporation ("ExxonMobil") and Intervenor-Defendants Vertellus Specialties Inc. ("Vertellus") and CBS Corporation ("CBS") ("Settling Defendants") that have entered into this Consent Decree do not admit any liability to Plaintiffs

arising out of the transactions or occurrences alleged in the complaint and Section I of the Consent Decree, nor do they acknowledge that the release or threatened release of hazardous substances at or from the BJS Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

E. The BJS Site, as further defined herein, is located along Hoult Road on the east side of the city of Fairmont, Marion County, West Virginia. The BJS Site includes property historically used in the operation of a coal tar refining facility, and for salvage operations and for waste disposal, and includes land previously and currently owned by several parties. To the southeast of the BJS Site lies the Sharon Steel/Fairmont Coke Works Property, as further defined herein.

F. Reilly Tar and Chemical Corporation ("Reilly") owned a portion of the BJS Site, and operated a coal tar processing plant there from at least 1933 to 1973. Vertellus is a successor-in-interest to Reilly with respect to the BJS Site. Reilly received and processed crude coal tar from outside sources.

G. In January 1973, Reilly sold its property to Big John Salvage, Inc. ("Big John Salvage"), which operated a salvage facility at the BJS Site from approximately 1974 to 1984. During its operation, Big John Salvage accepted various scrap and salvageable materials, in addition to waste materials that contained hazardous and non-hazardous substances, including glass cullet (crushed non-saleable fluorescent light bulbs), lead dust, oil containing mercury, and drummed liquid wastes, and other wastes allegedly from the Westinghouse Electric Corporation's light bulb manufacturing plant located across the street from the BJS Site. CBS is a successor-in-interest to Westinghouse with respect to the BJS Site. Big John Salvage filed for bankruptcy under Chapter 11 in May 1984.

H. Between 1920 and 1948 ExxonMobil's predecessor, Domestic Coke Corporation, operated a facility that produced coke and coke products on the Sharon Steel/Fairmont Coke Works Property. Sharon Steel Corporation acquired the production facility and property in 1948 and continued to operate it until 1979. Both Domestic Coke and Sharon Steel Corporation sold crude coal tar to Reilly. Domestic Coke, and then Sharon Steel Corporation, owned a railroad right of way that traversed a portion of the edge of the uplands portion of the BJS Site.

I. The BJS Site has been subject to environmental regulatory interest since at least the late 1930's when it had first been investigated by the State. Over the years the State has had concerns regarding liquid wastes containing tar being discharged into an onsite tributary. The State has continued to be involved with the BJS Site.

J. EPA conducted an assessment in August 1981 which included sampling of various media. This assessment led EPA to initiate removal activities in July 1983. Since that time and continuing to the present, EPA and potentially responsible parties ("PRPs") have conducted various removal activities at the BJS Site.

K. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the BJS Site on the National Priorities List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on July 27, 2000, 65 Fed. Reg. 46096.

L. On June 4, 2002, EPA sent special notice letters to certain PRPs requesting a meeting to start negotiations for performance of the Remedial Investigation and Feasibility Study ("RI/FS"). The recipients of the special notice letters declined EPA's request to perform the RI/FS. EPA initiated a fund-lead RI in 2005. The RI included both human health and ecological risk assessments. The Final RI was completed in April 2009.

M. EPA determined that a non-time critical removal action was a more appropriate course of action for the BJS Site prompting EPA to conduct an Engineering Evaluation/Cost Analysis ("EE/CA") as required by the NCP. On October 2, 2009, EPA published a notice of the availability of the proposed EE/CA and the supporting administrative record file in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public. EPA held a public meeting on the proposed EE/CA on October 22, 2009. A transcript of the public meeting is available to the public as part of the administrative record upon which the Division Director of the Hazardous Site Cleanup Division, EPA Region III, based the selection of the response action.

N. The decision by EPA on the response action to be implemented at the BJS Site is embodied in a final Action Memorandum ("Action Memo"), concurred upon by the State and executed by EPA on September 30, 2010 (Appendix A). The Action Memo includes a responsiveness summary in which public comments have been addressed. Based on currently available information, no materials to be managed in performance of the Work are listed hazardous wastes under 40 CFR Part 261, Subpart D, including, but not limited to, K147 and K148 wastes. Notwithstanding the foregoing, nothing in this Consent Decree limits EPA's authorities based upon development of new information.

O. The Sharon Steel/Fairmont Coke Works Property is included within the Sharon Steel/Fairmont Coke Works Superfund Site ("FCW Site"). The FCW Site, adjacent to the BJS Site, encompasses approximately 97 acres located along Hoult Road on the east side of the city of Fairmont in West Virginia. EPA placed the FCW Site on the NPL on December 23, 1996 (61 Fed. Reg. 67656). A tributary flows between the BJS Site and FCW Site and empties into the Monongahela River. Facilities previously on the BJS Site and FCW Site operated alongside

one another for almost fifty years and contributed significant amounts of hazardous substances, pollutants or contaminants to the Monongahela River by way of the tributary. Comingled wastes from the BJS Site and FCW Site which have come to be located in Unnamed Tributary #1 and a hot spot area located within the Monongahela River will be addressed in accordance with the Action Memo.

P. The FCW Site is being addressed by ExxonMobil under an Administrative Order and Project XL Agreement executed on or about May 24, 1999. Subsequent to the ongoing response activity, EPA will issue a Record of Decision that will document the selected remedy for the FCW Site.

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

R. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the response activities set forth in the Action Memo and the Work to be performed by Performing Defendant shall constitute response activities taken or ordered by the President for which judicial review shall be limited to the administrative record.

S. The Parties recognize that additional work may be required under future EPA decision documents.

T. 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 BJS 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 Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

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

3. Performing 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 BJS 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. Performing 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. Performing 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 Performing 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:

"Action Memorandum" or "Action Memo" shall mean the EPA Action Memorandum relating to the BJS Site signed on September 30, 2010 by the Division Director of the Hazardous Site Cleanup Division, EPA Region III, and all attachments thereto. The Action Memorandum is attached as Appendix A.

"Big John's Salvage – Hoult Road Superfund Site" or "BJS Site" shall mean the property located along Hoult Road on the east side of the city of Fairmont, Marion County, West Virginia historically used in the operation of a coal tar refining facility and for salvage operations and waste disposal by Big John Salvage, and surrounding areas where contamination from such operations has come to be located, including the Unnamed Tributary #1 and Surrounding Area, Unnamed Tributary #2, the Monongahela River hot spot area and groundwater affected by the release of Waste Material from the BJS Site (as depicted generally on Appendix B).

"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 XXVI). 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.

"EE/CA" shall mean the September 2010 Engineering Evaluation/Cost Analysis prepared for the BJS Site by TetraTech NUS, Inc. on behalf of the United States Environmental Protection Agency and is an attachment to Appendix A.

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

"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 pursuant to this Consent Decree after August 9, 2011. Future Response Costs shall also include (a) all interest on those Past Response Costs Settling Defendants have agreed to reimburse under this Consent Decree that has accrued pursuant to 42 U.S.C. § 9607 during the period from the Effective Date to the date of payment and (b) Department of Justice Costs incurred after February 27, 2010.

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

shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

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

"Non-Performing Defendants" shall mean Exxon Mobil Corporation, ExxonMobil Environmental Services Company, ExxonMobil Oil Corporation, and CBS Corporation, and with regard to each, its predecessors and successors.

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

"Parties" shall mean the United States, the State of West Virginia, and Settling Defendants.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurred or paid at or in connection with the BJS Site prior to August 9, 2011. Past Response Costs shall not include Department of Justice costs after February 27, 2010.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Removal Action, set forth in the Action Memo and those that are developed by Performing Defendant and approved by EPA in the Removal Design.

"Performing Defendant" shall mean Vertellus Specialties Inc. and its predecessors and successors.

"Plaintiffs" shall mean the United States and State, as defined below.

"Post-Removal Site Controls" shall mean legal instruments, engineering controls and/or other monitoring and maintenance activities necessary to sustain the effectiveness of the Removal Action as defined by the Consent Decree.

"QSF Trust" shall mean the Trust and Qualified Settlement Fund established by Performing Defendant pursuant to the terms of the Trust and Qualified Settlement Fund Agreement approved by the Court pursuant to this Consent Decree, in a form attached hereto as Appendix D. The QSF Trust was established as a trust under the laws of the State of West Virginia and is designed to qualify as a Qualified Settlement Fund under Section 468B of the Internal Revenue Code and the Code Regulations thereunder.

"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).

"Removal Action" shall mean those activities undertaken to implement the response action set forth in the Action Memorandum (Appendix A) in accordance with the final Removal Design Work Plan, Response Action Plan, and other plans approved by EPA.

"Response Action Plan" or "RAP" shall mean the document developed pursuant to Paragraph 10.e. of this Consent Decree and approved by EPA, and any amendments thereto.

"River Removal Action" shall mean the removal action set forth in the Action Memorandum to address the black semi-solid deposits (BSD) and visibly stained sediment deposits (SSD) in the Monongahela River near the confluence with the Unnamed Tributary #1.

"River Removal Action Work" shall mean that portion of the Work relating to the River Removal Action.

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

"Settling Defendants" shall mean:

i. CBS Corporation and its predecessors and successors;

ii. Vertellus Specialties Inc. and its predecessors and successors; and,

iii. Exxon Mobil Corporation, including ExxonMobil Environmental Services Company and ExxonMobil Oil Corporation, and their predecessors and successors.

"Sharon Steel/Fairmont Coke Works Property," for purposes of this Consent Decree, refers to that real property that is identified by the Marion County Tax Assessors Office as tax parcels 24-06-2-0001.0000, 24-06-2-0013.0000, 24-06-3-0031.0000, 24.06-3-0079.0000, 24-06-3-0086.0000, 24-06-3-0087.0000, 24-06-3-0088.0000, 24-06-3-0089.0000, 24-06-4-0001.0000, 24-06-4-0001.0001, 24-06-5-0002.0001, and 24.06-500-0012.0000, except those portions of these tax parcels that are within the areas that are defined in this Consent Decree as the Unnamed Tributary #1 and Surrounding Area and the strip of property denoted "Domestic Coal & Coke RR 33' R-O-W" on Appendix B.

"Sharon Steel/Fairmont Coke Works Superfund Site" or "FCW Site" shall mean the former coke plant property owned and operated by ExxonMobil's predecessor (Domestic Coke) from 1920 to 1948 and Sharon Steel Corporation from 1948 to 1979. The FCW Site encompasses approximately 97 acres located along Hoult Road on the east side of the city of Fairmont in West Virginia, where coke plant operations, waste treatment and disposal operations were located. EPA placed the FCW Site on the NPL on December 23, 1996. (61 Fed. Reg., 67656). The FCW Site includes that real property that is identified by the Marion County Tax Assessors Office as tax parcels 24-06-2-0001.0000, 24-06-2-0013.0000, 24-06-3-0031.0000, 24.06-3-0079.0000, 24-06-3-0086.0000, 24-06-3-0087.0000, 24-06-3-0088.0000, 24-06-3-0089.0000, 24-06-4-0001.0000, 24-06-4-0001.0001, 24-06-5-0002.0001, and 24.06-

500-0012.0000, the Unnamed Tributary #1 as well as areas where FCW Site contamination has come to be located (Monongahela River). In accordance with the terms of this Consent Decree, as of the Effective Date, the Unnamed Tributary #1 and Surrounding Area and the strip of property denoted "Domestic Coal & Coke RR 33' R-O-W" on Appendix B, will be addressed solely as part of the BJS Site.

"State" shall mean the State of West Virginia.

"State Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs and attorneys fees as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), CERCLA Section 107(a), 42 U.S.C. § 9607(a), that are incurred pursuant to this Consent Decree associated with the BJS Site after the Effective Date.

"United States" shall mean the United States of America including its agencies, departments, and instrumentalities.

"Unnamed Tributary #1" shall mean the network of intermittent streams draining the eastern portion of the BJS Site and which received drainage and discharge from the BJS Site and the Sharon Steel/Fairmont Coke Works Property. The Unnamed Tributary #1 discharges to the Monongahela River.

"Unnamed Tributary #1 and Surrounding Area" shall mean the area between the Big John's Salvage property boundary and the surveyed "release line" south of the watercourse denoted "Northern Drainage Way" and "Unnamed Tributary No. 1," all as depicted on the "Big John Salvage - Hoult Road Site" map attached as Appendix B. The release line extends from the point labeled "Point 1" to the point labeled "Point 44" on Appendix B. This area includes all portions of the watercourses west and north of the release line, but no portion of the Monongahela River.

"Unnamed Tributary #2" shall mean the drainage area commencing in the northwestern portion of the BJS Site, running west along the northern boundary of the Site and continuing approximately 600 feet northwest along Hoult Road to the point that the drainage ditch intersects with subsurface pipe(s) flowing south beneath the Church of the Everlasting Covenant. Unnamed Tributary #2 includes the subsurface pipes to the point that the discharge enters the Monongahela River, but no portion of the Monongahela River. Unnamed Tributary #2 does not include the drainage ditch extending further northwest beyond the point that it intersects with the subsurface pipes described above.

"Uplands Area" shall mean all portions of the BJS Site, excluding any portion of the Monongahela River. For the avoidance of doubt, the Uplands Area includes, the Unnamed Tributary #1 and Surrounding Area, Unnamed Tributary #2, groundwater affected by the release of Waste Material from the BJS Site, and areas where BJS contamination has come to be located, other than the Monongahela River.

"Uplands Area Work" shall mean that portion of the Work relating to the Uplands Area. The Uplands Area Work does not include the River Removal Action.

"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 required to be performed under this Consent Decree, except those required by Section XXII (Retention of Records).

"WVDEP" shall mean the West Virginia Department of Environmental Protection and any successor departments or agencies of the State.

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 BJS Site by the design and implementation of response actions at the BJS Site and to resolve the claims of Plaintiffs against Settling Defendants as provided in this Consent Decree.

6. Commitments by Settling Defendants.

a. Performing Defendant (Vertellus) shall perform the Work in accordance with this Consent Decree, the Action Memorandum, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Performing Defendant and approved by EPA pursuant to this Consent Decree.

b. Non-Performing Defendants shall provide funds, as more specifically set forth in Paragraph 39 below, in support of Performing Defendant's obligations under this Consent Decree.

7. Compliance with Other Laws. All activities undertaken by Performing Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Performing Defendant must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the Action Memorandum. 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, 42 U.S.C. § 9621(e), 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, Performing Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Performing Defendant may seek relief under the provisions of Section XV (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, provided that they have submitted timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

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.

VI. PERFORMANCE OF THE WORK

9. Designation of Contractors and Project Coordinators.

a. Performing Defendant shall retain one or more Supervising Contractor(s) to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within 20 days after the lodging of this Consent Decree. The proposed contractor must demonstrate compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002, March 2001, reissued May 2006), or equivalent documentation as required by EPA. Any decision not to require submission of the contractor's QMP should be documented in a memorandum from EPA's Project Coordinator to the BJS Site file. Performing Defendant shall

also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 14 days prior to the commencement of such Work, unless circumstances require that the Work be commenced less than 14 days after the notice is provided. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Performing Defendant. If EPA disapproves of a selected contractor, Performing Defendant shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 21 days of receipt of EPA's disapproval. Performing Defendant must obtain notice of acceptance of the new contractor from EPA before that new contractor performs, directs or supervises any Work under this Consent Decree.

b. Within 5 days after the lodging of this Consent Decree, Performing Defendant shall designate a Project Coordinator who shall be responsible for the administration of all actions by Performing Defendant required by this Consent Decree and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent reasonably possible, the Project Coordinator shall be present onsite or readily available during BJS Site work. EPA retains the right to disapprove of the selection of the designated Project Coordinator. If EPA disapproves of the selection of the designated Project Coordinator, Performing Defendant shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 20 days following receipt of EPA's disapproval. Receipt by Performing Defendant's Project Coordinator of any notice or communication from EPA relating to this Consent Decree shall constitute receipt by Performing Defendant. All of the foregoing notices and communications from EPA will also be sent to the individuals identified in Section XXIII (Notices and

Submissions) for Performing Defendant at the same time that they are sent to Performing Defendant's Project Coordinator.

c. EPA has designated Eric Newman of EPA Region III's Hazardous Site Cleanup Division as its Remedial Project Manager ("RPM") and Project Coordinator with regard to the Work. Performing Defendant shall direct 2 copies of all submissions required by this Consent Decree to Mr. Newman at the following address:

Eric Newman
Hazardous Site Cleanup Division
US Environmental Protection Agency, Region III
1650 Arch Street (3HS23)
Philadelphia, PA 19103
Telephone 215-814-3237
Facsimile 215-814-3002
newman.eric@epa.gov

d. WVDEP has designated Thomas L. Bass as its Project Coordinator with regard to the Work. Performing Defendant shall direct 2 copies of all submissions required by this Consent Decree to Mr. Bass at the following address:

Thomas L. Bass
West Virginia Department of Environmental Protection
Division of Land Restoration
Office of Environmental Remediation
601 57th Street, SE
Charleston, WV 25304-2345
Telephone 304-926-0499 (ext 1274)
Facsimile 304-926-0457
Thomas.l.bass@wv.gov

e. EPA, the WVDEP, and Performing Defendant each shall have the right, subject to Paragraph 9.b. above, to change its designated Project Coordinator. Performing Defendant shall notify EPA at least 5 days before such a change is made. The initial notification may be orally made, but it shall be promptly followed by a written notice.

10. Work to Be Performed.

a. Removal Design Work Plan. Within 30 days after EPA's acceptance of the selection of the Supervising Contractor pursuant to Paragraph 9.a., Performing Defendant shall submit to EPA and the WVDEP, for approval by EPA in consultation with WVDEP, a work plan for the design ("Removal Design Work Plan" or "RDWP") of the response action set forth in the Action Memorandum (Appendix A) and for achievement of the Performance Standards and other requirements set forth in this Consent Decree. The RDWP shall be prepared by the individual(s) and/or entity(ies) responsible for completion of the Removal Design. Upon approval of the RDWP by EPA, and submittal of the Health and Safety Plan for field activities to EPA and the WVDEP, Performing Defendant shall implement the RDWP in accordance with the schedules and methodologies contained therein. Performing Defendant shall submit to EPA and the WVDEP all plans, submittals, and other deliverables required under the approved RDWP for review and approval pursuant to Section IX (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Performing Defendant shall not commence further removal design field activities at the BJS Site prior to approval of the RDWP. Upon its approval by EPA, the Removal Design Work Plan shall be incorporated into and become enforceable under this Consent Decree.

b. Removal Design Work Plan Requirements. The RDWP shall include plans, schedules, and methodologies for implementation of all removal design and pre-design tasks, including but not limited to: (i) formation of the design team; (ii) a Site Management Plan describing project approach, including response action components that will be designed/implemented independently to expedite the response; (iii) requirements for additional pre-design field data collection, including a Sampling and Analysis Plan, containing a Field

Sampling Plan and a Quality Assurance Project Plan (QAPP); and, (iv) a schedule for completion of the design(s), including plans and schedules for the preparation and submission of the preliminary, pre-final and final design submittals.

c. Preliminary Design. The preliminary design begins with the initial design and ends with the completion of approximately 30% of the design effort. The preliminary design submittal required under Paragraph 10.b., above, shall include, at a minimum, the following:

i. Design Criteria Report, including as appropriate:

a. project description;

b. design requirements and provisions;

c. preliminary process flow diagrams, as appropriate;

d. post-removal site control requirements;

ii. Basis of Design Report, including:

a. justification of design assumptions;

b. a project delivery strategy;

c. identification of permits required for off-site response actions;

d. preliminary easement/access requirements;

iii. Preliminary Drawings and Specifications, including:

a. required specifications in outline form;

b. preliminary schematics and drawings;

c. chemical and geotechnical data (including data from pre-design field sampling activities);

iv. a value engineering screen; and

v. a preliminary response action schedule.

d. Pre-final and Final Design. The pre-final and final design submittal required under Paragraph 10.b., above, shall include, at a minimum, the following plans as well as expeditious schedules and specific methodologies for implementation of these plans: (i) final plans and specifications for the response action; (ii) a response action implementation schedule; (iii) a Sampling and Analysis Plan to be used as a basis for environmental monitoring during construction activities, characterizing waste materials, and ascertaining whether Performance Standards have been met; (iv) a preliminary Construction Quality Assurance Plan ("CQAP"), which shall detail the approach to quality assurance during construction activities at the BJS Site; (v) a post-removal site control plan which shall identify necessary actions and measures necessary to maintain the effectiveness and integrity of the response action (or schedule for developing the site control plan); (vi) complete specifications for preparation of a health and safety plan for field activities required by the pre-final/final design; (vii) complete specifications for preparation of procedures and plans for the decontamination of equipment and disposal of contaminated materials; (viii) a plan to acquire permits for off-site response actions and to meet the substantive requirements of all onsite activities which would otherwise require a permit if the actions were not to take place on a Superfund site; (ix) a plan for complying with the Off-Site Rule, 40 C.F.R. § 300.440; and (x) a response action contingency plan.

e. Response Action Plan. Upon approval, approval with conditions, or modification by EPA in consultation with WVDEP, as provided in Section IX (EPA Approval of Plans and Other Submissions), of all components of the final design submittal, the final

design submittal shall serve as the Response Action Plan ("RAP") and shall be enforceable under this Consent Decree. Performing Defendant shall implement the activities required under the Response Action Plan in accordance with the schedules and methodologies contained therein. With the exception of any activities currently conducted by Performing Defendant and approved by EPA, Performing Defendant shall not commence any Work except in conformance with the terms of this Consent Decree. Unless otherwise directed by EPA or required under the Response Action Plan, Performing Defendant shall not commence physical activities at the BJS Site prior to receiving written EPA approval.

f. Health and Safety Plan. At the same time the Removal Design Work Plan is submitted, Performing Defendant shall submit to EPA and the WVDEP, for review and comment, a Health and Safety Plan ("HSP") for field design activity that ensures the protection of the public health and safety during performance of On-Site work under this Consent Decree. The HSP shall be prepared in accordance with "EPA's Standard Operating Safety Guide" (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the HSP shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910 and shall include, at a minimum, the following:

i. Assessment of chemical and physical hazards at all relevant locations;

ii. Identification of site control measures and required levels of protection and safety equipment;

iii. Field monitoring requirements;

iv. Equipment and personnel decontamination and residual management;

v. Training and medical monitoring requirements;

vi. Emergency planning and emergency contacts; and

vii. Contingency plan for removal design field activities.

Performing Defendant shall incorporate all changes to the HSP recommended by EPA and shall implement the HSP during the pendency of the removal action. Upon EPA approval of the Response Action Plan, the HSP shall be revised to incorporate health and safety specifications required by the final design.

g. Post-Removal Site Control. In accordance with the schedule in the RAP, or as otherwise directed by EPA in consultation with WVDEP, Performing Defendant shall submit a proposal for post-removal site control consistent with Section 300.415(l) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, Performing Defendant shall implement such controls and shall provide EPA and WVDEP with documentation of all post-removal site control arrangements.

h. Physical Construction Complete Benchmark. When Performing Defendant concludes that physical construction portion of the Uplands Area Work or the River Removal Action Work has been completed and only respective Post-Removal Site Controls remain, Performing Defendant shall notify EPA and WVDEP in writing and schedule and conduct a pre-construction complete inspection to be attended by Performing Defendant, EPA and WVDEP. EPA, in consultation with WVDEP, will develop a punch list identifying tasks remaining to be performed, if any. When EPA, in consultation with WVDEP, concludes that the respective physical construction has been substantially completed, EPA will so notify Performing Defendant in writing as soon as practicable.

11. Quality Assurance and Sampling.

a. As a component of the RDWP, Performing Defendant shall submit to EPA for approval a Quality Assurance Project Plan ("QAPP") which will describe all sampling and analysis procedures to be followed to document the type and quality of data needed to satisfy the requirements of this Consent Decree and to provide a blueprint for collecting and assessing those data which are to be collected to meet the requirements of this Consent Decree. The QAPP shall comply with the requirements of the documents entitled "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations, EPA QA/R5", (EPA/240/B-01/003, March 2001, reissued May 2006) and "Guidance for Quality Assurance Project Plans" (QA/G-5)(EPA/240/R-02/009, December 2002) and subsequent amendments to such guidance documents upon notification by EPA to Performing Defendant of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

b. All sampling and analyses performed pursuant to this Consent Decree shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Performing Defendant shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Performing Defendant shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Performing Defendant shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data

Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

c. Upon request by EPA, Performing Defendant shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Performing Defendant shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

d. Upon request by EPA and/or WVDEP, Performing Defendant shall allow EPA, WVDEP or its authorized representatives to take split and/or duplicate samples. Performing Defendant shall notify EPA and WVDEP not less than 30 days prior to any sample collection activity, unless shorter notice is agreed to by EPA. EPA and/or WVDEP shall have the right to take any additional samples that EPA and/or WVDEP deem(s) necessary. Upon request, EPA and WVDEP shall allow Performing Defendant to take split or duplicate samples of any samples it takes as part of its oversight of Performing Defendant's implementation of the Work.

e. Performing Defendant shall submit to EPA and the WVDEP copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Performing Defendant with respect to the BJS Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

VII. ACCESS

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

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

i. Monitoring the Work;

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

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

iv. Obtaining samples;

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

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

vii. Implementing the Work in accordance with this Consent Decree, including, without limitation, the conditions set forth in Paragraph 72 (Work Takeover) of this Consent Decree;

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

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

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

b. Commencing on the date of lodging of this Consent Decree, refrain from using the BJS Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the measures to be performed pursuant to this Consent Decree.

c. Within 30 days of the Effective Date of this Consent Decree, submit to EPA for review and approval a restrictive environmental covenant identifying land use restrictions in a format consistent with the West Virginia Uniform Environmental Covenants Act, WV Code Chapter 22, Article 22B-4 and identifying WVDEP as a holder. Within 15 days of such Settling Defendant's receipt of EPA's approval of the environmental covenant such Settling Defendant shall cause such environmental covenant to be recorded with the Recorder of Deeds office in Marion County, West Virginia. Such Settling Defendant shall submit to EPA a copy of the environmental covenant evidencing recordation within 30 days of receipt by such Settling Defendant of a copy of the recorded environmental covenant from the Recorder of Deeds office.

13. If the BJS Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of Settling Defendants, Performing Defendant shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Performing Defendant, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 12.a. of this Consent Decree;

b. an agreement, enforceable by Performing Defendant and the United States, to refrain from using the BJS Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the measures to be performed pursuant to this Consent Decree; and

c. a restrictive environmental covenant identifying land use restrictions in a format consistent with the West Virginia Uniform Environmental Covenants Act, WV Code Chapter 22, Article 22B-4.

14. For the purposes of Paragraph 13 of this Consent Decree, "best efforts" include the payment of reasonable sums of money in consideration of access, access easements and/or land/water use restrictive environmental covenants, a proprietary control, and/or an agreement to release or subordinate a prior lien or encumbrance. If, after using their best efforts, Performing Defendant is unable to obtain the access or land/water use restriction agreements required by Paragraph 13 of this Consent Decree within 45 days of the date of entry of this Consent Decree, Performing Defendant shall promptly notify the United States in writing, and

shall include in that notification a summary of the steps that Performing Defendant has taken to attempt to comply with Paragraph 13 of this Consent Decree. The United States may, as it deems appropriate, assist Performing Defendant in obtaining access or the land/water use restrictions. Performing Defendant shall reimburse the United States in accordance with the procedures in Section XIII (Payments), for all costs incurred, direct or indirect, by the United States in obtaining such access or land/water use restrictions, including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

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

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

VIII. REPORTING REQUIREMENTS

17. Progress Reports. Performing Defendant shall submit a written progress report to EPA's and WVDEP's Project Coordinators and the Non-Performing Defendants concerning actions undertaken pursuant to this Consent Decree every 30th day after the Effective Date and continuing until termination of this Consent Decree, unless otherwise directed in writing by EPA's Project Coordinator. These reports shall describe all significant developments during the preceding reporting period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during

the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolution of past or anticipated problems.

18. Upon request by EPA, Performing Defendant shall submit all plans, reports or other submissions in electronic form.

19. Final Report. Within 30 days after completion of all Work required by this Consent Decree, Performing Defendant shall submit to EPA and WVDEP, for approval by EPA in consultation with WVDEP, a Final Report summarizing the actions taken to comply with this Consent Decree. The Final Report shall include a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (*e.g.*, manifests, invoices, bills, contracts, and permits). The Final Report shall be certified in accordance with paragraph 36.

20. Upon the occurrence of any event during performance of the Work that Performing Defendant is required to immediately report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), Performing Defendant shall, within 24 hours of it having first acquired knowledge of such event, orally notify the EPA Project Coordinator or, in the event that the EPA Project Coordinator is unavailable, the Chief of EPA Region III Hazardous Site Cleanup Division's DE, VA and WV Remedial Branch. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304. In addition, if there is an occurrence requiring immediate or emergency response, Performing Defendant shall call the

West Virginia Spill Hotline (In State) 1-800-642-3074; (Out of State) 1-800-424-8802. Also, where appropriate, Performing Defendant shall call Miss Utility of West Virginia. 1-800-245-4848.

21. Within 20 days of providing the notice required by the preceding Paragraph to EPA, Performing Defendant shall furnish to Plaintiffs a written report, signed by Performing 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 referred to in the preceding Paragraph, Performing Defendant shall submit a report to EPA setting forth all actions taken in response thereto.

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

IX. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

23. 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, consistent with the response action selected by EPA in the Action Memorandum: (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 Performing Defendant modify the submission; or (e) any combination of the above. However, EPA may not modify a submission without first providing Performing Defendant at least one notice of deficiency and an opportunity to cure within 14 days, or such longer period of time as specified by EPA in such notice, except where to do so would cause serious disruption to the Work or where previous submission(s) have been

disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

24. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 23, Performing 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 XVI (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 23.c. and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XVII (Stipulated Penalties).

25. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 23.d., Performing Defendant shall, within 14 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 XVII (Stipulated Penalties), shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 26 and 27.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 23.d., Performing 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 Performing Defendant of any liability for stipulated penalties under Section XVII (Stipulated Penalties).

26. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require Performing 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. Performing 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 XVI (Dispute Resolution).

27. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Performing Defendant shall be deemed to have failed to submit such plan, report, or item timely and adequately unless Performing Defendant invokes the dispute resolution procedures set forth in Section XVI (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XVI (Dispute Resolution) and Section XVII (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 XVII (Stipulated Penalties).

28. 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.

X. PERFORMANCE GUARANTEE

29. In order to ensure the full and final completion of the Work, Performing Defendant shall establish and maintain a performance guarantee which shall initially be

$10,500,000.00 with respect to the Uplands Area Work and $5,056,000.00 with respect to the River Removal Action Work. The performance guarantee, which must be satisfactory in form and substance to EPA, shall be in the form of one or more of the following mechanisms provided that, if Performing Defendant intends to use multiple mechanisms, such multiple mechanisms shall be limited to surety bonds guaranteeing payment, letters of credit and trust funds:

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

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

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

d. A demonstration by Performing Defendant that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the estimated cost of completing the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are met to EPA's satisfaction; or

e. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following; (i) a direct or indirect parent company of Performing Defendant, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with Performing Defendant; provided, however, that any company

providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test and reporting requirements for owners and operators set forth in subparagraphs (1) through (3) and (5) through (8) of 40 C.F.R. § 264.143(f) with respect to the estimated cost of completing the Work that it proposes to guarantee hereunder.

30. Initial Approved Forms of Performance Guarantees

a. Performing Defendant has selected, and EPA has found satisfactory, initial performance guarantees pursuant to Paragraph 29, each specific to the Uplands Area Work and the River Removal Action Work, and consisting of the following:

i. as to the Uplands Area Work, an irrevocable letter of credit in the form attached hereto as Appendix C (the "Uplands Area Work Letter of Credit") in the total dollar amount of which is initially $10,500,000.00. A qualified settlement fund trust ("QSF Trust") in the form attached hereto as Appendix D is also created and hereby approved by the Court, which, consistent with Paragraph 34.b.(1), may be used as a Performance Guarantee for the Uplands Area Work; and,

ii. as to the River Removal Action Work, a trust fund, in the amount of $5,056,000.00, ("BJS Site River Removal Action Work Trust") in the form attached hereto as Appendix E.

b. Within ten (10) days after the Effective Date, Performing Defendant shall execute, cause to be issued, or otherwise finalize the Uplands Area Work Letter of Credit and BJS Site River Removal Action Work Trust Agreement in the forms attached hereto as Appendices C and E, respectively. Within thirty (30) days of the Effective Date, Performing Defendant shall submit all executed and/or otherwise finalized instruments or other documents

required in order to make the selected performance guarantee(s) legally binding to the EPA and the United States in accordance with Section XXIII (Notices and Submissions), with a copy to the Chief, Cost Recovery Branch (3HS62) for EPA Region III.

31. If, at any time after the Effective Date and before issuance of the Certification of Completion of the Work pursuant to Paragraph 36, Performing Defendant provides a performance guarantee for completion of the Uplands Area Work or the River Removal Action Work by means of a demonstration or guarantee pursuant to Paragraph 29.d. or 29.e., Performing Defendant shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f) relating to these mechanisms unless otherwise provided in this Consent Decree, including but not limited to: (a) the initial submission of required financial reports and statements from the relevant entity's chief financial officer ("CFO") and independent certified public accountant ("CPA"), in the form prescribed by EPA in its financial test sample CFO letters and CPA reports available at: http://www.epa.gov/compliance/resources/policies/cleanup/superfund/fa-test-samples.pdf; (b) the annual re-submission of such reports and statements within 90 days after the close of each such entity's fiscal year; and (c) the prompt notification of EPA after each such entity determines that it no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1) and in any event within 90 days after the close of any fiscal year in which such entity no longer satisfies such financial test requirements. For purposes of the performance guarantee mechanisms specified in this Section X, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to include the Work; the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to include all dollar

amounts described in Paragraphs 1-4 of the "Sample CFO Letter" attached hereto as Appendix F; the terms "owner" and "operator" shall be deemed to refer to Performing Defendant; the terms "facility" and "hazardous waste facility" shall be deemed to include the BJS Site; and a letter required by 40 C.F.R §264.151(f) shall be deemed to refer to a letter in the form attached hereto as Appendix F.

32. In the event that EPA or Performing Defendant determines at any time that the performance guarantee for the Uplands Area Work or the River Removal Action Work is inadequate or fails to meet the requirements set forth in this Section, whether due to an increase in the estimated cost of the Work or for any other reason, Performing Defendant, within 30 days of receipt of notice of EPA's determination or, as the case may be, within 30 days of Performing Defendant becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of performance guarantee listed in Paragraph 29 that satisfies all requirements set forth in this Section X; provided, however, that if Performing Defendant cannot obtain such revised or alternative form of performance guarantee within such 30-day period, and provided further that such Performing Defendant shall have commenced to obtain such revised or alternative form of performance guarantee within such 30-day period, and thereafter diligently proceeds to obtain the same, EPA shall extend such period for such time as is reasonably necessary for such Performing Defendant in the exercise of due diligence to obtain such revised or alternative form of performance guarantee, such additional period not to exceed 60 days. On day 30, Performing Defendant shall provide to EPA a status report on its efforts to obtain the revised or alternative form of guarantee. In seeking approval for a revised or alternative form of performance guarantee, Performing Defendant shall follow the procedures set forth in Paragraph 34.b.(2). Performing

Defendant's inability to post a performance guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Performing Defendant to complete the Work in strict accordance with the terms of this Consent Decree. Notwithstanding the foregoing, EPA and Performing Defendant agree that the performance guarantee for the Uplands Area Work shall not exceed $10,500,000.00.

33. Funding for Work Takeover. The commencement of any Work Takeover pursuant to Paragraph 72 shall trigger EPA's right to receive the benefit of any performance guarantee(s) provided pursuant to Paragraphs 29.a., 29.b., 29.c., or 29.d., and at such time EPA shall have immediate access to resources guaranteed under any such performance guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. Upon the commencement of any Work Takeover, if (a) for any reason EPA is unable to promptly secure the resources guaranteed under any such performance guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or (b) in the event that the performance guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 29.d. or Paragraph 29.e.(ii), Performing Defendant (or in the case of Paragraph 29.e.(ii), the guarantor) shall immediately upon written demand from EPA deposit into a special account within the EPA Hazardous Substance Superfund or such other account as EPA may specify, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of completing the Work as of such date, as determined by EPA. In addition, if at any time EPA is notified by the issuer of a performance guarantee that such issuer intends to cancel the performance guarantee mechanism it has issued,

then, unless Performing Defendant provides a substitute performance guarantee mechanism in accordance with this Section X no later than 30 days prior to the impending cancellation date, EPA shall be entitled (as of and after the date that is 30 days prior to the impending cancellation) to draw fully on the funds guaranteed under the then-existing performance guarantee. All EPA Work Takeover costs not reimbursed under this Paragraph shall be reimbursed under Section XIII (Payments).

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

a. Reduction of Amount of Performance Guarantee. If Performing Defendant believes that the estimated cost of completing the Work has diminished below the amounts set forth in Paragraph 29, Performing Defendant may, on any date after EPA has approved any final design submittal/Response Action Plan in accordance with Paragraph 10.e., or concurrent with the submission of such final design submittal/Response Action Plan(s), petition EPA in writing to reduce the amount of the Uplands Area Work or River Removal Action Work performance guarantees provided pursuant to this Section so that the amount of such performance guarantee is equal to the estimated cost of completing the Work. In requesting a reduction, Performing Defendant shall submit a written proposal to EPA that shall include a cost estimate consistent with the following:

i. The cost estimate must be based upon current dollars and costs that would be incurred by an independent third-party in performing the remaining portion of the Work described in the approved Response Action Plan and set forth the total cost of the remaining Work activities for the entire period this Consent Decree is effective, but not to exceed thirty (30) years, including: operation and maintenance costs; costs of performing any interim measures; any

necessary long term monitoring costs; adjustments for uncertainties; contingencies; and replacement costs. Such costs shall be adjusted to reflect the Net Present Value ("NPV"), which shall be calculated using the Treasury Constant Maturities Nominal 30-Year Rate, averaged for the previous twelve (12) months (using the average spot rate for each month). The cost estimate shall also include a schedule that documents the costs that will be spent to perform the Work during each calendar year.

ii. In seeking approval for a reduction in the amount of the performance guarantee, Performing Defendant shall follow the procedures set forth in Paragraph 34.b.(2) and (3) for requesting a revised or alternative form of performance guarantee, except as specifically provided in this Paragraph 34.a. If EPA accepts Performing Defendant's proposal to reduce the amount of performance guarantee, either to the amount proposed by Performing Defendant or to some other amount selected by EPA, EPA will notify Performing Defendant of such decision in writing and the estimated cost of completing the Work shall be as set forth in EPA's written decision. Upon receiving EPA's written decision, Performing Defendant may so reduce the amount of the performance guarantee and shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding in accordance with Paragraph 34.b.(2). In the event of a dispute, Performing Defendant may reduce the amount of the performance guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section

XVI (Dispute Resolution).

iii. After EPA's acceptance of any revised cost estimate, the amount of the performance guarantee thereafter will be reduced each year by the amount of the estimate for the prior calendar year without need for additional EPA acceptance, provided, however, that Performing Defendant submits a signed statement that the costs incurred within the last calendar year are no greater than 5% more than the costs projected in the cost estimate for that year and projected work milestones were achieved. Performing Settling Defendant shall thereafter submit a revised performance guarantee instrument in the same form and with the same terms as the one then in effect, except that the amount will be reduced accordingly.

iv. Should Performing Defendant seek a greater or subsequent reduction in the amount of any performance guarantee, or, if an anticipated project milestone is not met, Performing Settling Defendant shall submit to EPA a revised cost estimate using the methodology in Paragraph 34.a.i. After EPA's approval of such revised cost estimate, additional reductions in the performance guarantee will be allowed at the end of each calendar year in accordance with Paragraph 34.a.iii, based on the schedule contained in the revised cost estimate. No change to the form or terms of any performance guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 30.b., 32, or 34.b.

b. Change of Form of Performance Guarantee.

(1) As of the Effective Date, Performing Defendant has established a

QSF Trust which EPA has found satisfactory as a stand-by form of performance guarantee for the Uplands Area Work in addition to or in lieu of the Uplands Area Work Letter of Credit, provided, however, that should Performing Defendant desire to use the QSF Trust as a performance guarantee, the QSF Fund shall be funded to the satisfaction of EPA pursuant to Paragraph 32 and further provided that EPA may require amendment of the QSF Trust to include a schedule of disbursement relating to Work performed.

(2) If, after the Effective Date, Performing Defendant desires to change the form or terms of any performance guarantee(s) provided pursuant to this Section, Performing Defendant may, on any anniversary of the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form or terms of the performance guarantee provided hereunder. The submission of such proposed revised or alternative performance guarantee shall be as provided in Paragraph 34.b.(3).

(3) Performing Defendant shall submit a written proposal for a revised or alternative performance guarantee to EPA which shall specify, at a minimum, the estimated cost of completing the subject Work based on the methodology used in Paragraph 34.a. and the proposed revised performance guarantee, including all proposed instruments or other documents required in order to make the proposed performance guarantee legally binding. The proposed revised or alternative performance guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Performing Defendant shall submit such proposed revised or alternative performance guarantee to the EPA and the United States in accordance with Section XXIII (Notices and Submissions) with a copy to the Chief, Cost Recovery Branch (3HS62) for EPA Region III. EPA will notify Performing Defendant in writing of its decision to accept or reject a revised or alternative performance guarantee

submitted pursuant to this Paragraph. Within ten days after receiving a written decision approving the proposed revised or alternative performance guarantee, Performing Defendant shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected performance guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such performance guarantee(s) shall thereupon be fully effective. Performing Defendant shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding to the EPA Chief, Cost Recovery Branch (3HS62) for EPA Region III within 30 days of receiving a written decision approving the proposed revised or alternative performance guarantee in accordance with Section XXIII (Notices and Submissions).

35. Release of Performance Guarantee. Performing Defendant shall not release, cancel, or discontinue any performance guarantee provided pursuant to this Section except as provided in this Paragraph. If Performing Defendant receives written notice from EPA in accordance with Paragraph 36.b. that the Uplands Area Work or the River Removal Action Work has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies Performing Defendant in writing, Performing Defendant may thereafter release, cancel, or discontinue the performance guarantee(s) for the completed work provided pursuant to this Section. In the event of a dispute, Performing Defendant may release, cancel, or discontinue the performance guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XVI (Dispute Resolution).

XI. CERTIFICATION OF COMPLETION

36. Completion of the Work.

a. Within 90 days after Performing Defendant concludes that all phases of the Uplands Area Work or the River Removal Action Work have been fully performed, and the Performance Standards for such Work have been achieved, Performing Defendant shall schedule and conduct a pre-certification inspection to be attended by Performing Defendant, EPA and WVDEP. If, after the pre-certification inspection, Performing Defendant still believes that the Uplands Area Work or the River Removal Action Work has been fully performed, and the Performance Standards for such Work have been achieved, Performing Defendant shall submit a written report by a registered professional engineer and registered geologist stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree ("Request for Certification of Completion"). The Request for Certification of Completion shall contain the following statement, signed by a responsible corporate official of Performing Defendant or Performing 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 review of the Request for Certification of Completion, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work for which Performing Defendant has submitted the Request for Certification of Completion has not been completed in accordance with this Consent Decree, or that the Performance Standards for such Work have not been achieved, EPA will notify Performing Defendant in writing of the activities that must be undertaken by Performing Defendant pursuant to this Consent Decree to

complete the subject Work and achieve the pertinent Performance Standards. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the Response Action Plan or require Performing Defendant to submit a schedule to EPA for approval pursuant to Section IX (EPA Approval of Plans and Other Submissions). Performing Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent Request for Certification of Completion submitted by Performing Defendant and after a reasonable opportunity for review and comment by the State, that the Work for which Performing Defendant has submitted the Request for Certification of Completion has been performed in accordance with this Consent Decree, EPA will so notify Settling Defendants in writing as soon as practicable. Nothing contained herein is intended as a waiver of the rights of the State of West Virginia to contest an EPA Certification in a judicial appeal based upon the failure of a remedy to meet State "applicable relevant and appropriate requirements" ("ARAR's") under CERCLA.

XII. EMERGENCY RESPONSE

37. 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 BJS Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Performing Defendant shall, subject to Paragraph 38, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the National Response Center (800) 424-8802 and the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, the Chief of EPA Region III

b. Within 60 days of the Effective Date, Non-Performing Defendant ExxonMobil shall pay $5,000,000.00 into the BJS Site River Removal Action Work Trust established as part of the performance guarantee pursuant to Paragraph 30.a.ii.

40. Payment of Past Response Costs. Within 65 days of the Effective Date, Performing Defendant Vertellus shall pay to EPA $11,000,000.00 as full and complete payment for all Past Response Costs. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2008v00758, EPA Site/Spill ID No. 0371, and DOJ Case Number 90-11-3-08499. Payment shall be made in accordance with instructions provided to Performing Defendant by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of West Virginia 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. Performing Defendant shall send notice that such payment has been made to the United States as specified in Section XXIII (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. At the time of payment, Performing Defendant shall send copies of the payment confirmation to the United States as specified in Section XXIII (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

41. Payments by Performing Defendant for Future Response Costs.

a. Performing Defendant shall pay to EPA all Future Response Costs not inconsistent with the NCP and any penalties required by Section XVII. On a periodic basis, EPA will send Performing Defendant a bill requiring payment that includes a cost summary

Hazardous Site Cleanup Division's DE, VA & WV Remedial Branch. If neither of these persons is available, Performing Defendant shall notify the EPA Region III Hotline at 215-814-3255. Performing 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 and any other applicable plans or documents developed pursuant to this Consent Decree. In the event that Performing Defendant fails to take appropriate response action as required by this Section, and EPA takes such action instead, Performing Defendant shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XIII (Payments).

38. 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 BJS 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 BJS Site, subject to Section XVIII (Covenants Not to Sue by Plaintiffs).

XIII. PAYMENTS

39. Payments by Non-Performing Defendants.

a. Within 60 days of the Effective Date, Non-Performing Defendant CBS shall pay $5,000,000.00 and Non-Performing Defendant ExxonMobil shall pay $6,000,000.00 into the QSF Trust established pursuant to Paragraph 30.a.i., such funds to be immediately accessible to Performing Defendant to meet its obligations hereunder. Such funds shall be used solely for such purposes.

setting forth direct and indirect costs incurred by EPA, DOJ and their contractors. Performing Defendant shall make all payments within forty-five (45) days of Performing Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 44.a. Performing Defendant shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," and referencing the name and address of the party making the payment, EPA Site/Spill ID No. 0371, and DOJ case number 90-11-3-08499. Performing Defendant shall send the check(s) to the United States Environmental Protection Agency, Superfund Payments, Cincinnati Finance Center, P.O. Box 979076, St. Louis, MO 63197-9000, and shall send copies of the check(s) to the United States as Specified in Section XXIII (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

b. Performing Defendant shall reimburse the State, as provided below, for all State Future Response Costs incurred in a manner not inconsistent with the NCP and/or applicable state statutes and regulations. The State will periodically send the Performing Defendant a bill requiring payment of State Future Response Costs that includes a cost summary, setting forth direct and indirect costs incurred by the State. The State Future Response Costs shall be documented in accordance with the NCP and/or applicable state statutes and regulations and shall include, but not be limited to, the following documents: financial management reports, invoices, time sheets and/or travel vouchers. The State shall provide Performing Defendant one copy of all supporting documentation, exclusive of any confidential business information and Privacy Act information at the time the bill is sent.

Performing Defendant shall make all payments required by Paragraph 41.b. to the "West Virginia Department of Environmental Protection" by sending to the following address:

West Virginia Department of Environmental Protection
Office of Fiscal Services, Accounts Receivable
601 57th Street, SE
Charleston, West Virginia 25304

Payment by Performing Defendant shall be by cashiers or certified check and Performing Defendant shall pay the total amount of the bill within thirty (30) days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 44.b. The check should reference "Big John Salvage-Response Costs"

42. Work Takeover. In the event that EPA assumes the responsibility to implement the Work in accordance with Paragraph 72 (Work Takeover), Performing Defendant shall pay to EPA all Future Response Costs not inconsistent with the NCP associated with the Work, that are incurred after the date that EPA assumes responsibility for implementing the Work. In addition, all monies secured for financial assurance pursuant to Paragraph 29.b. and c. shall be transferred into the BJS Site Special Account, as identified in Paragraph 43. In that event, on a periodic basis, the United States will send to Performing Defendant a bill requiring payment which includes an EPA-prepared cost summary, which includes direct and indirect costs incurred by EPA and its contractors, and a DOJ-prepared cost summary which reflects costs incurred by DOJ and its contractors, if any. Performing Defendant shall make all payments within 30 days of Performing Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 44.a. Performing Defendant shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," and referencing the name and address of the party making the payment, EPA Site/Spill ID No. 0371, and DOJ case number 90-11-3-08499. Performing Defendant

shall send the check(s) to the United States Environmental Protection Agency, Superfund Payments, Cincinnati Finance Center, P.O. Box 979076, St. Louis, MO 63197-9000, and shall send copies of the check(s) to the United States as specified in Section XXIII (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

43. Payments to Special Account. The total amount to be paid by Performing Defendant pursuant to Paragraphs 40, 41.a. and 42 shall be deposited by EPA in the BJS Site Special Account to be retained and used to conduct or finance response activities at or in connection with the BJS Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

44. Right to Contest United States Future Response Costs or State Future Response Costs.

a. Performing Defendant may contest payment of all or any portion of Future Response Costs under Paragraphs 41.a. and 42 if it determines that the United States has made a mathematical or accounting error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XXIII (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, Performing Defendant shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 41.a. Simultaneously, Performing Defendant shall establish an interest-bearing escrow account in a

federally-insured bank duly chartered in the State of West Virginia and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Performing Defendant shall send to the United States, as provided in Section XXIII (Notices and Submissions), a copy of the transmittal letter and check in the amount of 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, Performing Defendant shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If the United States prevails in the dispute, within 5 working days of the final resolution of the dispute, Performing Defendant shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 41.a. If Performing Defendant prevails concerning any aspect of the contested costs, Performing Defendant shall pay that portion of the costs (plus associated accrued Interest), if any, for which they did not prevail to the United States in the manner described in Paragraph 41.a; Performing 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 XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Performing Defendant's obligation to reimburse the United States for its Future Response Costs.

b. If Performing Defendant determines that the State has made an accounting error or if it alleges that the State has submitted a bill that is inconsistent with the NCP, applicable state statutes and regulations, or this Consent Decree, Performing Defendant shall file written objections to the bill of the State within thirty (30) days of receipt of the bill

specifically identifying the error or inconsistency. If the State agrees with Performing Defendant's objections it shall so inform Performing Defendant and submit a revised bill. If the State does not agree with the objections, it shall so inform Performing Defendant and the matter shall be subject to an informal negotiation period of twenty (20) days between the Director of the Division of Land Restoration of the West Virginia Department of Environmental Protection and a negotiator appointed by Performing Defendant. If after the informal negotiation period the matter is still not resolved, then the State and Performing Defendant agree that an independent mediator will be agreed upon by the State and Performing Defendant and mediation will be held within a second twenty (20) day period with each party splitting the costs of the mediation. If the mediation is unsuccessful, then the State and Performing Defendant hereby agree that either party may seek appropriate relief from this Court.

45. Interest. In the event that any payment for Past Response Costs, Future Response Costs, or State Future Response Costs required by this Section is not made by the date required, Performing Defendant shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs under this Paragraph shall begin to accrue on the Effective Date. The Interest on Future Response Costs or on State Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Performing 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 Performing Defendant's failure to make timely payments under this Section including, but not limited to, payment of Stipulated Penalties pursuant to Paragraphs 59 and 60.

XIV. INDEMNIFICATION AND INSURANCE

46. Performing Defendant's Indemnification of the United States.

a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Performing Defendant as EPA's authorized representatives under Section 104(e) of CERCLA. Performing 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 Performing Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Performing Defendant as EPA's authorized representatives under Section 104(e) of CERCLA. Further, Performing 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 Performing Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Performing Defendant in carrying out activities pursuant to this Consent Decree. Neither Performing Defendant nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Performing Defendant notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 46.a. as soon as practicable, and will consult with Performing Defendant prior to settling such claim.

47. Settling Defendants covenant not to sue and agree not to assert any 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 Defendants and any person for performance of Work on or relating to the BJS Site, including, but not limited to, claims on account of construction delays. In addition, Performing 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 BJS Site, including, but not limited to, claims on account of construction delays.

48. No later than 15 days before commencing any on-site Work, Performing Defendant shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion pursuant to Paragraph 36.b. of Section XI (Certification of Completion) comprehensive general liability insurance with limits of $5,000,000, combined single limit, and automobile liability insurance with limits of $500,000, combined single limit, naming the United States as additional insured. In addition, for the duration of this Consent Decree, Performing 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 Performing Defendant in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Performing Defendant shall provide to EPA certificates of such insurance and a copy of each insurance policy. Performing Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Performing 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, Performing Defendant needs to provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XV. FORCE MAJEURE

49. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Performing Defendant, of any entity controlled by Performing Defendant, or of Performing Defendant's contractor, that delays or prevents the performance of any obligation under this Consent Decree despite Performing Defendant's best efforts to fulfill the obligation. The requirement that Performing 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 or increased costs.

50. 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, Performing Defendant shall orally notify 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 Hazardous Site Cleanup Division, EPA Region III, within 48 hours of when Performing Defendant first knew that the event might cause a delay. Within 5 days thereafter, Performing 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; Performing 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 Performing Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Performing Defendant shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Performing 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. Performing Defendant shall be deemed to know of any circumstance of which Performing Defendant, any entity controlled by Performing Defendant, or Performing Defendant's contractors knew or should have known.

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

52. If Performing Defendant elects to invoke the dispute resolution procedures set forth in Section XVI (Dispute Resolution), it shall do so no later than 15 days after receipt of

EPA's notice. In any such proceeding, Performing 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 Performing Defendant complied with the requirements of Paragraphs 49 and 50, above. If Performing Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Performing Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XVI. DISPUTE RESOLUTION

53. 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 Settling Defendants that have not been disputed in accordance with this Section.

54. Unless otherwise expressly provided for in this Consent Decree, 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 a written Notice of Dispute to all of the other Parties to the dispute.

55. Statements of Position.

a. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 10 days after the conclusion of the informal negotiation

period, the affected Settling Defendant(s) invoke(s) the formal dispute resolution procedures of this Section by serving on the United States and all other Settling Defendants 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 Settling Defendant(s). The Statement of Position shall specify Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 56 or Paragraph 57.

b. Within 14 days after receipt of the affected Settling Defendants' Statement of Position, EPA will serve on all Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 56 or 57. Within 14 days after receipt of EPA's Statement of Position, the affected Settling Defendant(s) may submit a Reply.

c. If there is disagreement between EPA and Settling Defendants as to whether dispute resolution should proceed under Paragraph 56 or 57, the Parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the affected Settling Defendant(s) ultimately appeal(s) 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 56 and 57.

56. Record Review. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response activities 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 activities identified in the Action Memorandum 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 activities taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the response action selected in the Action Memorandum.

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

b. The Director of the Hazardous Site Cleanup Division, EPA Region III will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 56.a. This decision shall be binding upon Settling Defendant(s), subject only to the right to seek judicial review pursuant to Paragraph 56.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 56.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendant(s) 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(s) shall have the burden of demonstrating that the decision of the Hazardous Site

Cleanup Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 56.a.

57. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response activities identified in the Action Memorandum nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph. Following receipt of Settling Defendant's Statement of Position submitted pursuant to Paragraph 55, the Director of EPA Region III's Hazardous Site Cleanup Division, will issue a final decision resolving the dispute. The Hazardous Site Cleanup Division Director's decision shall be binding on Settling Defendant(s) unless, within 10 days of receipt of the decision, Settling Defendant(s) file with the Court and serve on the Parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant(s') motion.

58. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 66. 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 Settling Defendant(s) does/do not

prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVII. STIPULATED PENALTIES

59. Failure to Comply with Payment Requirements

a. Each Settling Defendant shall be liable to the United States for stipulated penalties in the amount set forth below for failure to comply with the payment requirements applicable to it as set forth in Section XIII (Payments) of this Consent Decree unless excused under Section XV (Force Majeure) and in compliance with Section X (Performance Guarantee).

The following stipulated penalties shall accrue per violation per day for each and every day that payment is delayed:

Penalty Per Violation Per Day	*Period of Noncompliance*
$ 3,500.00	1st through 14th day
$ 7,000.00	15th through 30th day
$ 12,000.00	31st day and beyond

b. Stipulated Penalties due to the State. If any payment due to the State under Paragraph 41.b. of this Consent Decree is not paid by the required date, Performing Defendant shall pay the State as appropriate a stipulated penalty, in addition to the interest required under Paragraph 45. Payment of stipulated penalties shall be as follows:

Penalty Per Violation Per Day	*Period of Noncompliance*
$ 2,000.00	1st through 14th day

$ 3,000.00	15th through 30th day
$ 5,000.00	31st day and beyond

Stipulated penalties are due and payable within thirty (30) days of the date for demand for payment of stipulated penalties by the State. Performing Defendant shall make all payments required by this Paragraph 59.b. to the "West Virginia Department of Environmental Protection" at the following address:

West Virginia Department of Environmental Protection
Office of Fiscal Services, Accounts Receivable
601 57th Street, SE
Charleston, West Virginia 25304

If Performing Defendant believes that the State has made an error with respect to the imposition of stipulated penalties, then Performing Defendant may object to the imposition of such penalties in the same manner and in the same fashion as Paragraph 44.b.

Payments made under this Paragraph shall be in addition to any other remedies available to the State under the law by virtue of Performing Defendant's failure to comply with the requirements of this Consent Decree.

60. Performing Defendant shall be liable to the United States for stipulated penalties in the amounts set forth below for failure to comply with the requirements of this Consent Decree, unless excused under Section XV (Force Majeure). "Compliance" by Performing Defendant shall include completion of all activities required under this Consent Decree in accordance with all applicable requirements of law, this Consent Decree, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

Penalty Per Violation Per Day	*Period of Noncompliance*
$ 3,500.00	1st through 14th day
$ 7,000.00	15th through 30th day
$ 10,000.00	31st day and beyond

61. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 72 of Section XVIII (Covenants Not to Sue by Plaintiffs), EPA will so notify Performing Defendant in writing and Performing Defendant shall be liable for a stipulated penalty in the amount of $1,500,000. Stipulated penalties under this Paragraph are in addition to the remedies available under Paragraph 72 (Work Takeover).

62. 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 IX (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 Performing Defendant of any deficiency; (2) with respect to a decision by the Director of the Hazardous Site Cleanup Division, EPA Region III, under Paragraphs 56.b. or 57 of Section XVI (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 XVI (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.

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

64. All penalties accruing under this Section shall be due and payable to the United States within 30 days of a Settling Defendant's(s') receipt from EPA of a demand for payment of the penalties attributable to such Settling Defendant, unless such Settling Defendant or Settling Defendants invoke the Dispute Resolution procedures under Section XVI (Dispute Resolution) within the 30 day period. All payments to the United States under this Section shall indicate that the payment is for stipulated penalties, and shall be made in accordance with Paragraphs 41.a. and 42. Payment made hereunder will be deposited in the Special Account for the BJS Superfund Site.

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

66. Penalties shall continue to accrue as provided in Paragraph 62 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 owed shall be paid to EPA within 30 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, such Settling Defendant shall pay all accrued penalties attributable to such Settling Defendant determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Paragraph 66.c. below;

c. If the District Court's decision is appealed by any Party, each Settling Defendant shall pay all accrued penalties attributable to it and determined by the District Court to be owed 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 each Settling Defendant to the extent that it/they prevail.

67. If a Settling Defendant fails to pay stipulated penalties attributable to it when due, that Settling Defendant shall pay Interest on the unpaid stipulated penalties as follows: (a) if the Settling Defendant has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 66 until the date of payment; and (b) if the Settling Defendants fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 62 until the date of payment. If the Settling Defendant fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

69. 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.

XVIII. COVENANTS NOT TO SUE BY PLAINTIFFS

70. Covenants for Settling Defendants by the United States and the State of West Virginia.

a. Covenant Not to Sue by the United States Relating to Past Response Costs. Except as specifically provided in Paragraph 71 (General Reservation of Rights), the United States covenants not to sue or to take administrative action against Settling Defendants, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant not to sue shall take effect upon receipt by EPA of all payments required under Paragraph 40 of Section XIII (Payments), and any amounts due under Section XVII (Stipulated Penalties and Interest) of the Consent Decree related to such payments. This Covenant extends only to Settling Defendants and does not extend to any other person.

b. Covenant Not to Sue by the United States Concerning Non-Performing Defendants.

i. Uplands Area. Except as specifically provided in Paragraph 71 (General Reservation of Rights), the United States covenants not to sue or to take administrative action against Non-Performing Defendants pursuant to Section 106 and 107(a) of CERCLA and Section 7003 of RCRA, with regard to the Uplands Area. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Paragraph 39. This Covenant extends only to Non-Performing Defendants and does not extend to any other person.

ii. River Removal Action. Except as specifically provided in Paragraph 71 (General Reservation of Rights), the United States covenants not to sue or to take administrative action against Non-Performing Defendants pursuant to Section 106 and 107(a) of CERCLA and Section 7003 of RCRA, with regard to the River Removal Action. This covenant not to sue shall not apply to additional work or any further response action in the Monongahela River that EPA may determine to be required under an EPA decision document other than the Action Memorandum. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Paragraph 39. This Covenant extends only to Non-Performing Defendants and does not extend to any other person.

c. Covenant Not to Sue by the United States Concerning Performing Defendant and with Respect to Performance of the Work and Future Response Costs. In consideration of the actions that will be performed under this Consent Decree, and the payment of Future Response Costs that will be made by Performing Defendant pursuant to Paragraph 41.a., and subject to Paragraphs 71 and 72, the United States covenants not to sue or to take administrative action against Performing Defendant pursuant to Sections 106 and 107(a) of

CERCLA and Section 7003 of RCRA, for the Work identified in the Action Memorandum. With respect to future liability, these covenants shall take effect upon Certification of Completion of obligations required under this Consent Decree by EPA pursuant to Paragraph 36.b. of Section XI (Certification of Completion). These covenants are conditioned upon the satisfactory performance by Performing Defendant of all obligations under this Consent Decree. These Covenants extend only to Performing Defendant and do not extend to any other person.

d. Covenant Not to Sue by the State of West Virginia Relating to Past Response Costs. Except as specifically provided in Paragraph 71 (General Reservation of Rights), the State of West Virginia covenants not to sue or to take administrative action against Settling Defendants, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), or under the West Virginia Hazardous Waste Management Act (W. Va. Code §§ 22-18 –1 to –25) or the West Virginia Hazardous Waste Emergency Response Fund Act (W. Va. Code §§ 22-19-1 to –6), to recover response costs related to the BJS Site incurred prior to the Effective Date of this Consent Decree. This covenant not to sue shall take effect upon receipt by EPA of all payments required under Paragraph 40 of Section XIII (Payments), and any amounts due to EPA under Section XVII (Stipulated Penalties and Interest) of the Consent Decree related to such payments. This Covenant extends only to Settling Defendants and does not extend to any other person.

e. Covenant Not to Sue by the State of West Virginia Concerning Non-Performing Defendants.

i. Uplands Area. Except as specifically provided in Paragraph 71 (General Reservation of Rights), the State of West Virginia covenants not to sue or take

administrative action against the Non-Performing Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), or under the West Virginia Hazardous Waste Management Act (W. Va. Code §§ 22-18 –1 to –25) or the West Virginia Hazardous Waste Emergency Response Fund Act (W. Va. Code §§ 22-19-1 to –6), with regard to the Uplands Area. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Paragraph 39. This Covenant extends only to Non-Performing Defendants and does not extend to any other person.

ii. River Removal Action. Except as specifically provided in Paragraph 71 (General Reservation of Rights), the State of West Virginia covenants not to sue or take administrative action against the Non-Performing Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), or under the West Virginia Hazardous Waste Management Act (W. Va. Code §§ 22-18 –1 to –25) or the West Virginia Hazardous Waste Emergency Response Fund Act (W. Va. Code §§ 22-19-1 to –6), with regard to the River Removal Action. This covenant not to sue shall not apply to additional work or any further response action in the Monongahela River that EPA may determine to be required under an EPA decision document after completion of the River Removal Action. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Paragraph 39. This Covenant extends only to Non-Performing Defendants and does not extend to any other person.

f. Covenant Not to Sue by the State of West Virginia Concerning Performing Defendant and with Respect to Performance of the Work and State Future Response Costs. In consideration of the actions that will be performed under this Consent Decree, and the payment of Future Response Costs that will be made by Performing Defendant pursuant to Paragraph 41.b, and subject to Paragraphs 71 and 72, the State of West Virginia covenants not

to sue or to take administrative action against Performing Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), or under the West Virginia Hazardous Waste Management Act (W. Va. Code §§ 22-18 –1 to –25) or the West Virginia Hazardous Waste Emergency Response Fund Act (W. Va. Code §§ 22-19-1 to –6), for the Work identified in the Action Memorandum. With respect to future liability related to the work enunciated in the Action Memorandum, these covenants shall take effect upon Certification of Completion of obligations required under this Consent Decree by EPA, in consultation with WVDEP, pursuant to Paragraph 36.b. of Section XI (Certification of Completion). These covenants are conditioned upon the satisfactory performance by Performing Defendant of all obligations under this Consent Decree, including but not limited to satisfactory performance by Performing Defendant of its obligations under Paragraph 41.b. (Payments by Performing Defendant For Future Response Costs). These Covenants extend only to Performing Defendant and do not extend to any other person.

71. General Reservations of Rights. The United States and the State of West Virginia reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within Plaintiffs' covenants. Notwithstanding any other provision of this Consent Decree, the United States and the State of West Virginia reserve all rights against Settling Defendants as set forth below:

a. As to all Settling Defendants:

i. liability of a Settling Defendant for its failure to meet a requirement of this Consent Decree;

ii. liability for future work required in the Monongahela River identified in any future EPA decision documents issued with respect to

either the FCW Site or the BJS Site and for studies required to support such decision documents;

iii. liability for future costs including, but not limited to, direct and indirect costs, that the United States incurs in the Monongahela River that are not pursuant to this Consent Decree;

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

v. liability based on the ownership or operation of the BJS Site by any Settling Defendant when such ownership or operation commences after signature of this Consent Decree by the Settling Defendant;

vi. liability based on any Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the BJS Site, other than as provided in the Action Memorandum, the Work, or otherwise ordered by EPA, after signature of this Consent Decree;

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

viii. criminal liability;

ix. liability for costs incurred subsequent to August 9, 2011 by the Agency for Toxic Substances and Disease Registry related to the BJS

Site that are not within the definition of Past Costs, which reservation applies only with respect to the United States.

b. In addition to the general reservations described in 71.a. above, the following reservations apply to Exxon Mobil Corporation:

i. liability for costs incurred or to be incurred with respect to the Sharon Steel/Fairmont Coke Works Property; and

ii. liability arising from the release or threat of release of hazardous substances on or under the Sharon Steel/Fairmont Coke Works Property, unless such hazardous substances are presently located on the BJS Site or, with respect to the Monongahela River, are addressed by the River Removal Action.

c. In addition to the general reservations described in 71.a. above, the following reservations apply to the Performing Defendant:

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

ii. liability for costs not included within the definitions of Past Response Costs or Future Response Costs; and

iii. liability for any response action that EPA determines is necessary, in addition to Work required under this Consent Decree.

72. Work Takeover.

a. In the event EPA determines that Performing Defendant (1) has ceased implementation of any portion of the Work, or (2) is seriously or repeatedly deficient or late in its performance of the Work, or (3) is implementing the Work in a manner that may cause an

endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Performing Defendant. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Performing Defendant a period of ten days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the ten-day notice period specified in Paragraph 72.a., Performing Defendant has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Performing Defendant in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 72.b. Funding of Work Takeover costs is addressed under Paragraphs 33 and 42.

c. Performing Defendant may invoke the procedures set forth in Paragraph 56 (Record Review), to dispute EPA's implementation of a Work Takeover under Paragraph 72. However, notwithstanding Performing Defendant's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 72 until the earlier of (1) the date that Performing Defendant remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with Paragraph 56 (Record Review) requiring EPA to terminate such Work Takeover.

73. 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.

XIX. COVENANTS BY SETTLING DEFENDANTS

74. Covenant Not to Sue by Settling Defendants. Subject to the reservations in Paragraphs 71 and 76, Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or the State of West Virginia with respect to the Work, past response activities regarding the BJS Site, Past Response Costs, Future Response Costs, State Future Response Costs, and 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, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, 9613, or the West Virginia Hazardous Waste Emergency Response Fund (W. Va. Code §§ 22-19-1 to –6), or any other provision of law, or any analogous State stature or regulation;

b. any claims against the United States or the State of West Virginia, including any department, agency or instrumentality of the United States or the State of West Virginia under CERCLA Sections 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Work, past response activities regarding the BJS Site, Past Response Costs, Future Response Costs, State Future Response Costs, Settling Defendants' past and future response costs incurred and to be incurred in connection with BJS Site, and this Consent Decree; or

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

75. Except as provided in Paragraph 83 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States or the State of West Virginia brings a cause of action or issues an order pursuant to any of the reservations in Section XVIII (Covenants Not to Sue by Plaintiffs), other than in Paragraphs 71.a.i. (claims for failure to meet a requirement of the Decree), 71.a.iii. (criminal liability), and 71.c.i. (violations of federal/state law during or after implementation of the Work), but only to the extent that Settling Defendants' claims arise from the same response activities identified in the Action Memorandum, response costs, or damages that the United States or the State of West Virginia is seeking pursuant to the applicable reservation.

76. Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States and the State of West Virginia, subject to the provisions of Chapter 171 of Title 28 of the United States Code or its equivalent under West Virginia law, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, 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 or the State of West Virginia, as that term is defined in 28 U.S.C. § 2671, or its equivalent under West Virginia law while acting within the scope of his or her office or employment under circumstances where the United States or the State of West Virginia, 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, the foregoing shall not

include any claim based on EPA's selection of response actions, or the oversight or approval of Settling Defendants' plans, reports, other deliverables or activities.

77. 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).

78. On or about, November 19, 1984, EPA and Vertellus' predecessor Reilly entered into a Consent Order, Docket No. III-85-2-DC, related to the BJS Site. (Appendix G). In or about September 1986, the District Court for the Northern District of West Virginia entered a Consent Decree (Appendix H) between the United States and Vertellus' predecessor Reilly, John Boyce, and Westinghouse Electric Corporation, now known as CBS, related to the payment of response costs to EPA related to the BJS Site (referred to in 1986 Consent Decree as the Hoult Road Site). Vertellus agrees that it will not assert any defense based on any provision of the 1984 Consent Order and/or the 1986 Consent Decree against the United States with respect to any claim by the United States against it for: (a) response costs not covered by this current Consent Decree or (b) additional work or further response actions EPA may determine to be necessary subsequent to completion of the River Removal Action and the Work identified in the Action Memo related to the Uplands Area.

EPA issued an Administrative Order for Removal Response Action, (AOC) Docket No. III-2000-0026-DC, to Reilly Industries Inc., (now known as Vertellus). Reilly Industries performed work under the aforementioned AOC. A dispute arose between Reilly Industries and EPA with respect to requirements for performance of certain work under the AOC. EPA agrees that it will not pursue any enforcement actions against Vertellus for civil penalties or punitive damages pursuant to Paragraph 12.5 of the AOC.

XX. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

79. 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. Each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), 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 BJS Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

80. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that each Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for "matters addressed" in this Consent Decree, provided, however, that nothing contained here shall prevent Settling Defendants from enforcing private agreements among themselves relating to the BJS Site, including without limitation, any side agreements executed between the Parties. The "matters addressed" in this Consent Decree as to Performing Settling Defendant and Non-Performing Settling Defendants shall have the meanings specifically stated below:

a. Performing Defendant. As to Performing Defendant, "matters addressed" in this Consent Decree shall mean Past Response Costs, Future Response Costs,

State Future Response Costs, and the Work, as defined in this Consent Decree. However, "matters addressed" do not include any response actions or response costs for which the United States has reserved its rights under Paragraph 71.

b. Non-Performing Defendants. As to Non-Performing Defendants, "matters addressed" in this Consent Decree shall mean Past Response Costs, Future Response Costs, State Future Response Costs, and the River Removal Action Work, as all are defined in this Consent Decree, and all response costs incurred and to be incurred and all response actions taken and to be taken with respect to the Uplands Area, as the Uplands Area is defined in this Consent Decree. However, "matters addressed" do not include any response actions or response costs for which the United States has reserved its rights under Paragraph 71.

81. Each Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

82. Each Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing the United States within ten days of service of the complaint on such Settling Defendant. In addition, each Settling Defendant shall notify the United States within ten days of service or receipt of any Motion for Summary Judgment and within ten days of receipt of any order from a court setting a case for trial.

83. Res Judicata and Other Defenses. 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 BJS Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the

claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XVIII (Covenants Not to Sue by Plaintiffs).

XXI. ACCESS TO INFORMATION

84. Each 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 BJS 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. Each 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.

85. Business Confidential and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). All such submissions shall be handled in accordance with the provisions specified in 40 C.F.R. Part 2, Subpart B. Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. Settling Defendants may assert that certain documents, records and other information requested by EPA are privileged under the attorney-client privilege or any other privilege recognized by federal law. If any Settling Defendant asserts such a privilege in lieu of providing documents, it shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendant. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. Settling Defendant shall retain all Records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. 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.

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

XXII. RETENTION OF RECORDS

87. Until 10 years after Settling Defendants' receipt of EPA's notification pursuant to Paragraph 36.b. of Section XI (Certification of Completion), each Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its potential liability under CERCLA with

respect to the BJS Site, provided, however, that Settling Defendants who are potentially liable as owners or operators of the BJS Site must retain, in addition, all documents and records that relate to the potential liability of any other person under CERCLA with respect to the BJS Site. Each Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

88. At the conclusion of this document retention period, each 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, each such Settling Defendant shall deliver any such records or documents to EPA. Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege or doctrine recognized by federal law. If a Settling Defendant asserts such a privilege, it shall provide Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendant. If a claim of privilege applies only to a portion of a

Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. Each Settling Defendant shall retain all Records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Defendant's favor. 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.

89. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the BJS Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the BJS 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.

XXIII. NOTICES AND SUBMISSIONS

90. 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, State, and Settling Defendants, respectively.

As to the United States:

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

As to EPA:

Chief, DE, VA and WV Remedial Branch
Hazardous Site Cleanup Division
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

Eric Newman (3HS23)
EPA Project Coordinator
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103
newman.eric@epa.gov

As to the State of West Virginia:

Mark J. Rudolph
Senior Counsel
Office of Legal Services
West Virginia Department
of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

Thomas L. Bass
State Project Manager
Division of Land Restoration
West Virginia Department
of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

As to Vertellus Specialties Inc:

General Counsel
Vertellus Specialties Inc.
201. N. Illinois Street
Indianapolis, IN 46204

Glenn A. Harris, Esq.
Ballard Spahr
210 Lake Drive Easte
Suite 200
Cherry Hill, NJ 08002

As to CBS Corporation:

William D. Wall, Esq.
Vice President, Assistant General Counsel
CBS Corporation
10th Floor, 20 Stanwix Street
Pittsburgh, PA 15222-4802

As to Exxon Mobil Corporation:

Robert W. Jackmore
Superfund Area Manager
ExxonMobil Environmental Services
3225 Gallows Road
Fairfax, VA 22037-0001
robert.w.jackmore@exxonmobil.com

Mark A. Zuschek
Office of the General Counsel
Exxon Mobil Corporation
3225 Gallows Road
Fairfax, VA 22037-0001
mark.a.zuschek@exxonmobil.com

Steven M. Jawetz
Beveridge & Diamond, P.C.
1350 I Street, NW Suite 700
Washington, DC 20005
sjawetz@bdlaw.com

XXIV. EFFECTIVE DATE

91. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving this Consent Decree, the date such order is entered on the Court docket.

XXV. RETENTION OF JURISDICTION

92. This Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendants for the duration of each such Settling Defendant's compliance 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 XVI (Dispute Resolution) hereof.

XXVI. APPENDICES

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

Appendix A – September 30, 2010 Action Memorandum (including Attachments);
Appendix B– Big John's Salvage Site-Hoult Road Site Drawing
Appendix C – Uplands Area Work Letter of Credit
Appendix D – Trust and Qualified Settlement Fund Agreement
Appendix E– BJS Site River Removal Action Trust Agreement
Appendix F–Sample CFO Letter
Appendix G – Consent Order, Docket No. III-85-2-DC
Appendix H– Consent Decree (N.D. WV)

XXVII. MODIFICATION

94. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of the EPA Project Coordinator and the Performing Defendant. All

such modifications shall be made in writing. Except as otherwise provided in this Paragraph, no modifications shall be made to provisions of this Consent Decree without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification to the provisions of this Consent Decree, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the Removal Design Work Plan, Response Action Plan, and any other plan approved by EPA under this Consent Decree that do not materially alter the requirements of those documents may be made by written agreement between the EPA Project Coordinator, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendants.

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

XXVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

96. 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, Section 7003(d) of RCRA, 2 U.S.C. §6973(d). The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

97. 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.

XXIX. SIGNATORIES/SERVICE

98. Each undersigned representative of a Settling Defendant to this Consent Decree, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, and the Cabinet Secretary, WVDEP, 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.

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

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

XXX. FINAL JUDGMENT

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

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

SO ORDERED THIS 10th DAY OF October, 2012.

Irene M. Keeley
United States District Judge

FOR THE UNITED STATES OF AMERICA:

8/9/12
Date

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

8/9/12
Date

NATHANIEL DOUGLAS
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
Pennsylvania Bar # 18217
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(P)(202) 514-4628
(F)(202) 616-6584

WILLIAM J. IHLENFELD, II
United States Attorney

8-15-12
Date

HELEN CAMPBELL ALTMEYER
Assistant United States Attorney
Northern District of West Virginia
1125 Chapline Street
Wheeling, W.V.
(T)(304) 234-0100
(F)(304) 234-0112

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

6/11/12
Date

SHAWN GARVIN
Regional Administrator
U.S. Environmental Protection Agency,
Region III
1650 Arch Street
Philadelphia, PA 19103

5/31/2012
Date

MARCIA E. MULKEY
Regional Counsel
U.S. Environmental Protection Agency,
Region III
1650 Arch Street
Philadelphia, PA 19103

Date

BONNIE A. PUGH
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency,
Region III
1650 Arch Street
Philadelphia, PA 19103

Big John's Salvage – Hoult Road Superfund Site

FOR STATE OF WEST VIRGINIA:

4/30/12
Date

RANDY HUFFMAN
Cabinet Secretary
West Virginia Department
Of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

4/30/12
Date

MARK J. RUDOLPH
Senior Counsel
Office of Legal Services
West Virginia Department
Of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

Big John's Salvage – Hoult Road Superfund Site

FOR VERTELLUS SPECIALTIES INC.:

MAY 4, 2012
Date

Signature: Thomas E. Mesevage
Name (print): Thomas E. Mesevage
Title: Corporate Counsel, Environmental
Address: Vertellus Specialties Inc.
900 Lanidex Plaza, Suite 250
Parsippany, NJ 07054

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

Name (print): Corporate Service Company
Title:
Address: 251 East Ohio Street, Suite 500
Indianapolis, IN 46204

Phone No.: 1-866-403-5272

FOR EXXON MOBIL CORPORATION:

April 24, 2012

Clifford L. Pearson
Major Projects Manager
(Agent and Attorney in Fact)
ExxonMobil Environmental Services
800 Bell Street
Room 791L1
Houston, TX 77002-7497

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

Corporation Service Company
Agent for Service of Process
209 West Washington Street
Charleston, WV 25302
(304) 340-1000

FOR CBS CORPORATION:

April 30, 2012
Date

Signature:
Name (print): Louis J. Briskman
Title: Executive Vice President & General Counsel
Address: CBS Corporation
51 W 52nd Street
New York, NY 10019

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

Name (print): Kevin M. Hogan
Title: Attorney for CBS Corporation
Address: Phillips Lytle, LLP
2400 HSBC Ctr.
Buffalo, NY 14222

Phone No.: 716.847.8331