UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

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NOV 8 1991

NOTICE OF DECISION NOT TO USE SPECIAL NOTICE PROCEDURES

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Mr. Charles Exley, Jr., President
NCR Corporation
1700 S. Patterson Boulevard
Dayton, OH 45479

Re: NCR Corporation (Millsboro Plant) Superfund Site
Millsboro, Sussex County, Delaware

Dear Mr. Exley:

This letter follows a general notice letter that was issued in April 1986, in connection with the NCR Corporation (Millsboro Plant) Superfund Site (Site). As the listed contact person for the potentially responsible party (PRP) identified above, this special notice letter has been sent to your attention.

By this letter you are being provided with an opportunity to participate in the Superfund remedial process by performing the Remedial Design and Remedial Action (RD/RA) for the NCR Corporation (Millsboro Plant) Superfund Site in Millsboro, Sussex County, Delaware.

NOTICE OF POTENTIAL LIABILITY

As set forth in the general notice letter previously sent to NCR Corporation (NCR), EPA has information that NCR may be a PRP as defined by Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9607(a), with respect to this Site.

DECISION NOT TO USE SPECIAL NOTICE

The United States Environmental Protection Agency (EPA) has decided not to invoke the Section 122(e) special notice procedures specified in CERCLA, 42 U.S.C. § 9622(e), with respect to NCR Corporation because it would not expedite the RD/RA for this Site. EPA has chosen not to issue Special Notice for RD/RA because NCR has expressed its willingness to initiate RD/RA work as soon as possible. NCR Corporation and the Delaware Department of Natural Resources and Environmental Control (DNREC) have an existing Consent Order dated March 18, 1988, to which the EPA was not a party, under which NCR Corporation agreed to perform the

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- Instituting an annual monitoring program for surface water and sediments of Iron Branch until the ground water clean up levels (MCLs and non-zero MCLGs) are achieved; and

- Institutional controls restricting ground water use until clean up levels (MCLs and non-zero MCLGs) are achieved throughout the entire ground water plume by establishing and enforcing a state ground water management zone and property deed restrictions regarding the installation of wells in the ground water management zone.

CONSENT DECREE

A copy of the EPA's ROD and site specific draft consent decree are attached. These are provided to assist you and the other PRPs in developing a good-faith offer for conducting the RD/RA.

GOOD-FAITH OFFER

A good faith offer must be submitted within 14 days of receipt of this letter. A good-faith offer to conduct or finance the RD/RA is a written proposal that demonstrates the PRPs' qualifications and willingness to conduct or finance the design, implementation, and monitoring of the remedy specified in the ROD. In order for your proposal to be considered a good-faith offer, it must include the following elements:

1. A statement of willingness by the PRPs to conduct or finance the RD/RA as described in EPA's ROD and draft site specific consent decree and which provides a sufficient basis for negotiations.

2. Detailed comments on the language or terms of EPA's draft site specific consent decree.

3. A general statement identifying how the PRPs plan to proceed with the work.

4. A demonstration of the PRPs' technical capability to carry out the RD/RA including the identification of the firm(s) that may actually conduct the work or a description of the process that will be used to select the firm(s).

5. A demonstration of the PRPs' willingness and ability to finance the response.

6. A statement of willingness by the PRPs to reimburse EPA for its unreimbursed past response costs and those costs to be incurred in overseeing the PRPs' conduct of

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- Instituting an annual monitoring program for surface water and sediments of Iron Branch until the ground water clean up levels (MCLs and non-zero MCLGs) are achieved; and

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2. Detailed comments on the language or terms of EPA's draft site specific consent decree.

3. A general statement identifying how the PRPs plan to proceed with the work.

4. A demonstration of the PRPs' technical capability to carry out the RD/RA including the identification of the firm(s) that may actually conduct the work or a description of the process that will be used to select the firm(s).

5. A demonstration of the PRPs' willingness and ability to finance the response.

6. A statement of willingness by the PRPs to reimburse EPA for its unreimbursed past response costs and those costs to be incurred in overseeing the PRPs' conduct of

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the RD/RA.

7. The name, address, and phone number of the party or steering committee who will represent the PRPs in negotiations.

REIMBURSEMENT OF EPA'S COSTS

In accordance with CERCLA, EPA already has undertaken certain actions and incurred certain costs in response to conditions at the Site. These response actions include EPA oversight of work undertaken by responsible parties. As of October 31, 1991, the EPA has incurred unreimbursed costs in excess of $602,309.93 for response activities related to the Site.

As set forth above, EPA anticipates expending additional funds for the RD/RA. Whether EPA funds the entire RD/RA, or simply incurs costs by overseeing the parties conducting these response activities, EPA believes that your company is liable for these expenditures and any unreimbursed past response costs, plus interest.

PRP STEERING COMMITTEE

EPA would like to encourage good faith negotiations between your company and the Agency, and between you and the other PRPs. To facilitate these negotiations EPA has enclosed a list of the other PRPs to whom this notification is being sent. Inclusion on or exclusion from the list does not constitute a final determination by EPA concerning the liability of any party for the release or threat of release of hazardous substances at the Site.

EPA recommends that all PRPs meet to select a steering committee responsible for representing the group's interests. Alternatively, EPA encourages each PRP to select one person from its company or organization who will represent its interest.

ADMINISTRATIVE RECORD

Pursuant to CERCLA Section 113(k), 42 U.S.C. § 9613(k), EPA has established an administrative record that contains documents that form the basis of EPA's decision on the selection of a response action for the Site. The administrative record file, which contains the documents related to the response action, selected for this Site, is available to the public for inspection and comment. The administrative record file is available at the information repositories at the following locations:

Town Office Building
P.O. Box 77
Mitchell Street
Millsboro, Delaware 19966
(302) 934-8171
Hours: M-F 8:00 am to 4:30 pm

Delaware Department of Natural Resources
and Environmental Control(DNREC)
715 Grantham Lane
New Castle, Delaware 19720
(302) 323-4540
Hours: M-F 8:00 am to 4:00 pm

U.S. EPA Region III, Docket Room
Ms. Margaret Leva
841 Chestnut Building, 9th floor
Philadelphia, PA 19107
(215) 597-3037
Hours: M-F 8:30 am to 4:30 pm

EPA will consider comments received, if any, after the close of the comment period in accordance with 40 C.F.R. § 300.825.

PRP RESPONSE AND EPA CONTACT PERSON

You are encouraged to contact EPA as soon as possible to state your willingness to participate in the future negotiations at this Site. Otherwise, you have 14 calendar days from receipt of this letter to provide EPA in writing with a good-faith offer demonstrating your willingness to perform the RD/RA for the Site. You may respond individually or through a steering committee if such a committee has been formed. If EPA does not receive a timely response, EPA will assume that you do not wish to negotiate a resolution of your liabilities in connection with the response, and that you have declined any involvement in performing the response activities. Under this circumstance, EPA may commence work without further notice or pursue enforcement options. You may be held liable by EPA under Section 107 of CERCLA for the cost of the response activities EPA performs at the Site and for any damages to natural resources.

Your response to this notice letter should be sent to:

Roberta Riccio (3HW25)
Remedial Project Manager
U.S. Environmental Protection Agency, Region III
841 Chestnut Building
Philadelphia, PA 19107

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as final EPA positions on any matter set forth herein.

If you or your attorney have any questions pertaining to these matter, please direct them to Lourdes del Carmen Rodriguez of the Office of Regional Counsel at (215) 597-6962.

Sincerely,

Abraham Ferdas, Director
Superfund Office

Enclosures

cc: William H. Talmage, NCR Corp.
Edward A. Kurent, Gilberg & Kurent
Jeanne Langdon, DNREC
Dilip Hansalia, DNREC
Anthony Conte, DOI
Kirsten Erickson, NOAA
Doanald Henne, DOI
Diane Wehner, NOAA
Wendy Wagner, USDA

DRAFT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA Plaintiff, v. Defendants.	CIVIL ACTION NO.

TABLE OF CONTENTS

MODEL CERCLA RD/RA CONSENT DECREE

I. BACKGROUND 1

II. JURISDICTION 4

III. PARTIES BOUND 5

IV. DEFINITIONS 6

V. GENERAL PROVISIONS 11

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS . . 16

VII. ADDITIONAL RESPONSE ACTIONS 24

VIII. U.S. EPA PERIODIC REVIEW 26

IX. QUALITY ASSURANCE 28

X. ACCESS 33

XI. REPORTING REQUIREMENTS 35

XII. SUBMISSIONS REQUIRING AGENCY APPROVAL; STATE REVIEW AND COMMENT 38

XIII. PROJECT COORDINATOR/REMEDIAL PROJECT MANAGER . . . 41

XIV. ASSURANCE OF ABILITY TO COMPLETE WORK 42

XV. CERTIFICATION OF COMPLETION 44

XVI. EMERGENCY RESPONSE 47

XVII. REIMBURSEMENT OF RESPONSE COSTS 48

XVIII. INDEMNIFICATION AND INSURANCE 52

XIX. FORCE MAJEURE 56

XX. DISPUTE RESOLUTION 59

XXI. STIPULATED PENALTIES 64

XXII. COVENANTS NOT TO SUE BY PLAINTIFFS 69

XXIII. COVENANTS BY SETTLING DEFENDANTS 73

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION . . 74

XXV. ACCESS TO INFORMATION 75

XXVII. RETENTION OF RECORDS 77

XXVII. NOTICES AND SUBMISSIONS 79

XXVIII. EFFECTIVE DATE 80

XXIX. RETENTION OF JURISDICTION 80

XXX. APPENDICES 80

XXXI. COMMUNITY RELATIONS 81

XXXII. MODIFICATION 81

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT . . . 82

XXXIV. SIGNATORIES/SERVICE 83

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA Plaintiff, v. Defendants.	CIVIL ACTION NO.

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106, 107 and 113(b) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607 and 9613(b).

B. The United States in its complaint seeks: (1) reimbursement of costs incurred by EPA and the United States Department of Justice for response actions at the NCR Millsboro Superfund Site (as defined below) in Millsboro, Delaware, together with accrued interest; (2) performance of studies and response work by the Defendants at the Site in conformity with the Record of Decision (as defined below) and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300 (as amended) ("NCP"); (3) a declaration of Defendants'

liability for further response costs; and (4) such other relief as the Court finds appropriate.

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Delaware (the "State") on July 11, 1991 of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this settlement.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Department of the Interior and the National Oceanic and Atmospheric Administration on October 23, 1991 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee to participate in the negotiation of this Consent Decree.

E. The Defendants who have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint.

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

G. In response to a release or a substantial threat of a

release of a hazardous substance(s) at or from the Site, NCR Corporation commenced on 1987, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to the NCP;

H. NCR Corporation submitted the final Remedial Investigation ("RI") Report with a Companion Supplemental Soil Investigation Report on April, 1991, and NCR Corporation submitted a final Feasibility Study ("FS") Report in May, 1991;

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on May 24, 1991, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

J. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on August 12, 1991, on which the State has given its concurrence. The ROD includes a summary of responses to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

K. Based on the information presently available to EPA and the State, EPA and the State believe that the Work (as defined below) will be properly and promptly conducted by the Settling

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Defendants.

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

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

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

II. JURISDICTION

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

III. PARTIES BOUND

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

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

IV. DEFINITIONS

A. 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:

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

2. "Consent Decree" shall mean this Decree and all appendices attached hereto. In the event of conflict between this Decree and any appendix, this Decree shall control.

3. "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.

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

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

6. "DNREC" shall mean the Delaware Department of Natural Resources and Environmental Control and any successor departments or agencies of the State.

7. "Future Response Costs" shall mean all costs, including, but not limited to, indirect costs, that the United States incursin overseeing the Work, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII (Additional Response Actions), VIII (EPA Periodic Review) and X (Access) (including, but not limited to, attorneys fees and the amount of just compensation), and Section XVI.A (Emergency Response), costs incurred pursuant to Section VI.F (Performance of the Work by Settling Defendants), and the costs of reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing or enforcing this Consent Decree. Future Response Costs shall also include all costs, including indirect costs, incurred by the United States in connection with the Site between October 31, 1991 and the effective date of this Consent Decree and costs incurred prior to October 31, 1991 that were not accounted for in EPA's Financial Management System and all interest on the Past Response Costs from October 31, 1991 to the date of payment of the Past Response Costs. This definition of future response costs shall not include costs for any response action or Operable Unit not addressed by this Consent Decree.

8. "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, including, but not limited to, any amendments thereto.

9. "Non-Owner Settling Defendant" shall mean the _____.

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

11. "Owner Settling Defendants" shall mean _____.

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

13. "Parties" shall mean the United Statesand the Settling Defendants.

14. "Past Response Costs" shall mean all costs, including, but not limited to, and indirect costs, that the United States incurred with regard to the Site prior to October 31, 1991 and all interest on such costs accrued prior to that date.

15. "Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations that are used to determine whether the objectives of the ROD and this Consent Decree are being achieved and that are set forth on Section 7.0 Description of Alternatives, pages 48-50, Section 9.0, Selected Remedy, pages 55-59 and Section 10.0, Statutory Determination, pages 59-66 of the ROD (Appendix A).

16. "Plaintiff" shall mean the United States

17. "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).

18. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site set forth in Appendix A hereto and signed on August 12, 1991, by the Regional Administrator, EPA Region III, and all attachments thereto.

19. "Remedial Action" shall mean all activities, as defined by Section 101(24) of CERCLA, 42 U.S.C. § 9601(24), except for Remedial Design and Operation and Maintenance, to be undertaken by the Settling Defendants to implement both the ROD and the final plans and specifications submitted by the Settling Defendants pursuant to the Remedial Design Work Plan and approved by EPA.

20. "Remedial Action Work Plan" shall mean a plan for Remedial Action, including a schedule for implementation of Remedial Action, submitted by Settling Defendants and approved by EPA pursuant to Section VI.B of this Consent Decree.

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

22. "Remedial Design Work Plan" shall mean a plan for Remedial Design, including a schedule for remedial design work, submitted by the Settling Defendants and approved by EPA pursuant

to Section VI.B [VI.C] of this Consent Decree.

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

24. "Settling Defendants" shall mean _____.

25. "Site" shall mean the NCR Corporation, (Millsboro Plant) Superfund site (NCR Millsboro Site) . The Site includes the former NCR Corporation property of approximately 58 acres and an 80-acre parcel of agricultural land. It is located at approximately 0.25 miles southeast of the intersection of Routes 113 and 24 in the town of Millsboro in Sussex County, Delaware and depicted more particularly on the map attached as Appendix B.

26. "State" shall mean the State of Delaware.

27. "Supervising Contractor" shall mean the contractor retained by the Settling Defendants to carry out the Work under this Consent Decree and accepted by EPA pursuant to Section VI.A.

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

29. "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) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous material" under 7 Delaware Code Chapter 63.

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

V. GENERAL PROVISIONS

A. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health and welfare and the environment from releases or threatened releases of Waste Material from the Site by the design and implementation of the Remedial Action and Operation & Maintenance at the Site by the Settling Defendants and to reimburse response costs of the Plaintiff.

B. Commitments by Settling Defendants

1. Settling Defendants shall finance and perform the Work in accordance with CERCLA, the NCP and this Consent Decree, including, but not limited to, the ROD, and all standards, specifications, and schedules set forth in or developed pursuant to this Consent Decree. Settling Defendants shall also reimburse the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree.

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

C. Compliance With Applicable Law

All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the

requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD. The United States has determined that the activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

D. Permits

1. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. § 300.400(e), no permits shall be required for any portion of the Work conducted entirely on-Site. However, the Settling Defendants shall ensure that all portions of the Work on the Site shall meet the substantive requirements of any applicable or relevant and appropriate requirement subject to EPA's right of review and approval. Where any portion of the off-site Work requires a federal, state or local permit or approval, Settling Defendants shall timely submit complete applications and take all other actions necessary to obtain all such permits or approvals.

2. The Settling Defendants may seek relief under the provisions of Section XIX (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work, provided they have submitted all required information in a timely manner.

3. This Consent Decree is not, and shall not be

construed to be, a permit issued pursuant to any federal, state or local statute, regulation or ordinance.

E. Notice of Obligations to Successors-in-Title

1. Within 15 days after the entry of this Consent Decree, each Owner Settling Defendant shall, with respect to the portion of the Site owned by that defendant, submit to the United States for approval language setting forth a covenant running with the land as more fully described below. This covenant running with the land, hereinafter the "Covenant", shall state that it is a covenant made to the United States, and that is intended to be and is enforceable by the United States and that it cannot be revoked or extinguished except with the express written consent of the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice. The Covenant shall be recorded in the official land records for Sussex County, Delaware and shall be indexed in such a manner as shall be effective to bring it to the attention of any person examining or researching the state and/or quality of the title of the real estate to which the Covenant relates, or any portion of it, and to the attention of any person searching for any recorded encumbrances, covenants, easements, restrictions or other similar limitations and burdens related to said real estate or any portion of it. A certified copy of this Consent Decree shall be attached as an exhibit to the Covenant, and the Covenant shall state that it is being recorded in fulfillment of a requirement of the Consent Decree which is an

order of the United States District Court for the District of Delaware. The Covenant shall provide that (i) The United States and its representatives shall have access at all reasonable times to the real estate to which the Covenant relates, including any portion of it, for purposes of effectuating and monitoring compliance with the terms of the Consent Decree; (ii) the performance, support and/or supervision of any remedial or response actions taken or to be taken at the Site, as defined in the Consent Decree, including any Operation and Maintenance activities shall not be interfered with, obstructed or disturbed; (iii) any person who holds or acquires any interest of any type in the real estate to which the Covenant relates, or any portion of it, shall inform any person or entity who subsequently acquires from that person any title, easement leasehold or other interest in the real estate to which the Covenant relates, or any portion of it, of the requirements, conditions and operative effect of the Covenant as a whole and Section X of the Consent Decree in particular; (iv) any person who holds or acquires any interest of any type in the real estate to which the Covenant relates, or any portion of it, shall include the language required by paragraph 2 below in any deed, easement, lease or other written instrument conveying any interest of any nature whatsoever in said real estate, or any portion of it, and (v) all interests of any nature now or subsequently held by any person in the real estate to which the Covenant relates, or any portion of it, shall be held under and subject to the access and other

rights of the United States under said Section X of the Consent Decree. The Covenant shall also contain an express statement that it is made for the benefit of the environment including but not limited to any on-site or off-site lands, surface waters, or ground waters to which the contamination addressed by the response actions called for by the Consent Decree could potentially spread. The Covenant shall contain such language and be executed with such formalities as are required to make it and all its terms effective under the law of (state). To the extent that such formalities require that consideration must be recited in the Covenant, the consent of the United States to the terms of this Consent Decree shall be recited as consideration. Within fifteen (15) days after approval by the United States of the Covenant language each Owner Settling Defendant shall provide proof to the United States of the recording of the Covenant required to be made and recorded by that defendant.

2. Any deed, easement, lease or other written instrument granting any title, interest or right in real estate subject to the Covenant described and required by paragraph 1 above, including any portion of any such real estate, shall include express language stating that the conveyance is under and subject to the Covenant, and stating that the Covenant is a requirement of a Consent Decree of the United States District Court for the District of Delaware. Any such deed, easement, lease or other written instrument shall also expressly state that the Covenant is enforceable by the United States and may not be revoked by

extinguished without the express written consent of the Assistant Attorney General of the Environment and Natural Resources Division of the United States Department of Justice. Also, any such deed, easement, lease or other written instrument shall reference the Deed Book and Page Numbers or otherwise fully and particularly identify the exact place in the land records of (county) (state) where the Covenant is recorded. Any oral lease or other oral transfer of any interest or right in the real estate to which the Covenant relates under paragraph 1 above, or any portion of it, shall also expressly be made subject to the terms of the Covenant.

3. Any Owner Settling Defendant and any Successor-in-Title shall, at least 30 days prior to the conveyance of any interest in the property, give written notice of this Consent Decree to the grantee and written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, the proposed language that will implement the requirements of Paragraphs 1 and 2 above and the date on which notice of the Consent Decree was given to the grantee. In the event of any such conveyance, the Settling Defendants' obligations under this Consent Decree shall continue to be met by the Settling Defendants. In addition, if the United States approves, the grantee may perform some or all of the Work under this Consent Decree. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of the Settling

Defendants to comply with the Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

A. Selection of Contractors.

1. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Work by Settling Defendants), VII (Additional Response Actions), VIII (U.S. EPA Periodic Review), IX (Quality Assurance, Sampling and Data Analysis) and XVI (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to acceptance or disapproval by EPA after a reasonable opportunity for review and comment by the State. Within 10 days after the lodging of this Consent Decree, Settling Defendants shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. If at any time after acceptance by EPA of the supervising contractor, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA and shall obtain acceptance from EPA, after a reasonable opportunity for review and comment by the State, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

2. EPA will notify Settling Defendants in writing of its acceptance or disapproval of a proposed Supervising Contractor. If EPA disapproves of the selection of any

contractor as Supervising Contractor, Settling Defendants shall submit to EPA the names of at least three contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously selected. EPA will provide written notice of the names of the contractor(s) that it accepts. Settling Defendants may select any accepted contractor from that list and shall notify EPA of the name of the contractor selected within 21 days of EPA's designation of accepted contractors.

3. After the Remedial Design Work Plan or Remedial Action Work Plan is approved and prior to commencement of any Work thereunder, the Settling Defendants shall submit to EPA for acceptance the names and qualifications of any additional contractors and subcontractors, including the name(s) and qualifications of the individual(s) or entities responsible for completion of Remedial Design submittals (the "Remedial Design Professional"). Settling Defendants shall notify EPA of the date the contract is entered into with the Remedial Design Professional. The Remedial Design Professional shall provide a Professional Engineer to be present at the Site during construction to ensure that the Work is performed in accordance with the approved Remedial Design submittal(s). EPA retains the right to disapprove any additional contractors and subcontractors selected to perform the Work. Within fourteen (14) days of receipt by EPA of the names of the additional contractors or subcontractors, EPA will notify Settling Defendants of its

acceptance or disapproval of the selected additional contractors or subcontractors. If EPA disapproves any additional contractor or subcontractor, Settling Defendants may submit further information to EPA giving reasons why the additional contractor or subcontractor should be accepted. Within fourteen (14) days of the receipt of the notice of disapproval, Settling Defendants shall notify the United States of the name and qualifications of a replacement additional contractor or subcontractor. If at any time during the pendency of this Consent Decree a decision is made by Settling Defendants to retain a substitute additional contractor or subcontractor, selection of the substitute shall be governed by the provisions of this Paragraph. If EPA fails to provide notice of its acceptance or disapproval of any additional contractor or subcontractor as provided in this Paragraph and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XIX (Force Majeure) of this Consent Decree.

B. Remedial Design/Remedial Action

1. Within 14 days after the lodging of this Consent Decree, the Settling Defendants shall submit to EPA for approval a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan") and shall submit the Quality Assurance Project Plan (QAPjP, as described in Section IX), prepared in accordance with Section IX. The Remedial Design Work Plan shall provide for the design of the remedy as set forth in

Appendix C and, upon its approval by EPA, shall be enforceable under this Consent Decree. Within 14 days after the effective date of this Consent Decree, the Settling Defendants shall submit to EPA a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

2. The Remedial Design Work Plan shall include plans, schedules, and methodologies for implementation of all necessary remedial design and pre-design tasks, including, but not limited to: (1) a Sampling and Analysis Plan (SAP), prepared in accordance with Section IX, (2) a Remedial Design Permitting Requirements Plan, (3) a Remedial Design Contingency Plan, (4) work plans and schedules for the design and implementation of treatability studies, and (5) plans and schedules for the preparation and submission of preliminary, pre-final and final design submittals. The treatability study work plans shall include Treatability Study Construction Quality Assurance Project Plans applicable to necessary construction. In addition, the Remedial Design Work Plan shall include an expeditious schedule for completion of all components of the Remedial Design.

3. Upon approval of the Remedial Design Work Plan, the Settling Defendants shall implement the Remedial Design Work Plan in accordance with the schedules and methodologies contained therein. The Settling Defendants shall submit all plans, submittals, and other deliverables required in accordance with

the approved schedule therein for review and approval pursuant to Section XII (Submissions Requiring Agency Approval; State Review and Comment). Unless otherwise directed by EPA, the Settling Defendants shall not commence activities at the Site prior to approval of the Remedial Design Work Plan.

4. The preliminary design submittal required under Paragraph B.2, above, shall include, at a minimum, the following: (1) design criteria; (2) results of treatability studies; (3) results of additional field sampling; (4) project delivery strategy; (5) preliminary plans, drawings and sketches; (6) required specifications in outline form; and (7) preliminary construction schedule.

5. The pre-final and final design submittals required under Paragraph B.2, above, shall each include, at a minimum, the following plans, as well as expeditious schedules and specific methodologies for implementation of these plans: (1) final designs and specifications for the Remedial Action; (2) Operation and Maintenance Plan; (3) a Remedial Action Construction Plan ; (4) a Remedial Action Construction Quality Assurance Plan (CQAP); (5) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); (6) a Groundwater Monitoring Plan (that will include provisions for sampling of residential and early warning wells); (7) complete specifications for preparation of a Health and Safety Plan for field activities required by the pre-final/final design; (8) complete specifications for preparation of procedures and plans for the

decontamination of equipment and disposal of contaminated materials (the "Decontamination Plan"); (9) a Remedial Action Permitting Requirements Plan and (10) a Remedial Action Contingency Plan. Settling Defendants shall ensure that specifications required under item 7, above, as accepted by EPA and under item 8, above, as approved by EPA, are met by Settling Defendants' contractor(s) in preparing the Health and Safety Plan and the Decontamination Plan. The Decontamination Plan shall be submitted by Settling Defendants for approval, and the Health and Safety Plan for field activities for acceptance, in accordance with the schedule set forth in the final design submittal, and upon approval of the Decontamination Plan and acceptance of such Health and Safety Plan, such plans shall be incorporated in, and enforceable as part of, the Remedial Action Work Plan.

The CQAP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify an Independent Quality Assurance Team (IQAT) to conduct a quality assurance program during the construction phase of the project. The IQAT shall be responsible for examining and testing various materials, procedures and equipment during implementation of the construction activities. The IQAT shall perform on-Site inspections of the Work to assess compliance with project standards, verify that the construction quality assurance plan is implemented, and report to the Settling Defendants and EPA the results of all inspections.

6. Upon approval, approval upon conditions, or

modification by EPA, as provided in Paragraphs B and D of Section XII below, of all components of the final design submittal, the final design submittal shall serve as the Remedial Action Work Plan and shall be enforceable under this Consent Decree. The Settling Defendants shall implement the activities required under the Remedial Action Work Plan in accordance with the schedules and methodologies contained therein.

7. The Settling Defendants shall submit all plans, submittals, or other deliverables required under the Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XII (Submissions Requiring Agency Approval; State Review and Comment). Unless otherwise directed by EPA or required under the Remedial Design Work Plan, the Settling Defendants shall not commence physical on-Site activities at the Site prior to the date for commencement set forth in the approved schedule in the Remedial Action Work Plan.

C. The Work performed by the Settling Defendants pursuant to this Consent Decree shall, at a minimum, achieve the Performance Standards as set forth in Section 7.0, Description of Alternatives, pages 48-50, Section 9.0, Selected Remedy, pages 55-59 and Section 10.0, Statutory Determination, pages 59-66 of the ROD (Appendix A).

D. Settling Defendants acknowledge and agree that nothing in this Consent Decree, the Description of Selected Remedy and Performance Standards as set forth on Section 7.0, Description o

Alternatives, pages 48-50, Section 9.0, Selected Remedy, pages 55-59 and Section 10.0, Statutory Determination, pages 59-66 of the ROD (Appendix A), or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiffthat compliance with the work requirements in the Description of Selected Remedy and Performance Standards as set forth on Section 7.0, Description of Alternatives, pages 48-50, Section 9.0, Selected Remedy, pages 55-59 and Section 10.0, Statutory Determination, pages 59-66 of the ROD (Appendix A) and the Remedial Design and the Remedial Action work plans will achieve the Performance Standards as set forth in on Section 7.0, Description of Alternatives, pages 48-50, Section 9.0, Selected Remedy, pages 55-59 and Section 10.0, Statutory Determination, pages 59-66 of the ROD (Appendix A). Such compliance shall not foreclose Plaintifffrom seeking compliance with all terms and conditions of this Consent Decree, including, but not limited to, the applicable Performance Standards.

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

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1. The Settling Defendants shall include in the

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

2. The identity of the receiving facility and state will be determined by the Settling Defendants following the award of the contract for Remedial Action construction. The Settling Defendants shall provide the written notification required by this Section VI.E, including the information required by Paragraph E.1 as soon as practicable after the award of the contract, but in no case less that 14 days before the Waste Materials are actually shipped.

F. In the event EPA determines that Settling Defendants have failed to implement any provisions of the Work in an adequate or timely manner, EPA may perform any and all portions of the Work as EPA determines necessary. Settling Defendants may dispute EPA's determination that the Settling Defendants failed to implement a provision of the Work in an adequate or timely manner, only by invoking the procedures set forth in Section XX (Dispute Resolution). Such dispute shall be resolved on the

administrative record pursuant to Section XX.B through D. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs for the purposes of Section XVII (Reimbursement of Response Costs).

VII. ADDITIONAL RESPONSE ACTIONS

A. In the event that EPA determines or the Settling Defendants propose that additional response actions are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD, notification of such additional response actions shall be provided by EPA to the Settling Defendants' Project Coordinator or by Settling Defendants to the EPA Remedial Project Manager.

B. Within 30 days (or such longer time as may be specified by EPA) of receipt of notice from EPA pursuant to Paragraph A of this Section VII that additional response actions are necessary, Settling Defendants shall submit for approval by EPA, a work plan for the additional response actions. The plan shall conform to the applicable requirements of Section VI (Performance of the Work by Settling Defendants). Upon approval of the plan pursuant to Section XII (Submissions Requiring Agency Approval; State Review and Comment), Settling Defendants shall implement the plan for additional response actions in accordance with the schedule contained therein.

C. Any additional response actions that Settling Defendants propose are necessary to meet the Performance Standards or to

carry out the remedy selected in the ROD shall be subject to approval by EPA, and, if authorized by EPA, shall be completed by Settling Defendants in accordance with plans, specifications, and schedules approved or established by EPA pursuant to Section XII (Submissions Requiring Agency Approval; State Review and Comment).

D. If required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. §§ 9613(k)(2) or 9617, or the NCP, Settling Defendants and the public will be provided with an opportunity to comment on any additional response actions proposed pursuant to this Section VII.B or C and to submit written comments for the record during the public comment period. After the period for submission of written comments is closed, the Regional Administrator, EPA Region III, or his/her delegate will determine in writing whether additional response actions are appropriate.

E. Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that additional response actions are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD. Such a dispute shall be resolved pursuant to Section XX.B through D of this Consent Decree.

VIII. U. S. EPA PERIODIC REVIEW

A. Settling Defendants shall conduct any studies and investigations as requested by EPA in order to permit EPA to conduct reviews at least every five years as required by Section

121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations.

B. If required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. §§ 9613(k)(2) or 9617, or the NCP, Settling Defendants and the public will be provided with an opportunity to comment on any additional response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and to submit written comments for the record during the public comment period. After the period for submission of written comments is closed, the Regional Administrator, EPA Region III, or his/her delegate will determine in writing whether additional response actions are appropriate.

C. If the Regional Administrator, EPA Region III, or his/her delegate determines that information received, in whole or in part, during the review conducted pursuant to Section 121(c) of CERCLA, indicates that the Remedial Action is not protective of human health and the environment, the Settling Defendants shall undertake any additional response actions EPA has determined are appropriate and that are not barred by the Covenant Not to Sue provided in Section XXII of this Consent Decree. However, the Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute (1) EPA's determination that the Remedial Action is not protective of human health and the environment, (2) EPA's selection of the further response actions ordered as arbitrary and capricious or otherwise not in accordance with law, or (3)

EPA's determination that the additional response action ordered is not barred by the Covenant Not to Sue in Section XXII of this Consent Decree. Such a dispute shall be resolved pursuant to Section XX.B through D of this Consent Decree.

D. Within sixty days after notice of EPA's determination that additional response actions are necessary or resolution of any dispute pursuant to Paragraph C of this Section VIII, whichever is later, Settling Defendants shall submit plans for design and implementation of any additional response actions they are required to perform in accordance with the applicable procedures set forth in Sections VI (Performance of the Work by Settling Defendants) and XII (Submissions Requiring Agency Approval; State Review and Comment) and, upon approval of such plans by EPA, shall complete the additional response action in accordance with such plans and any schedules contained therein.

IX. QUALITY ASSURANCE

A. While conducting all sample collection and analysis activities required by this Consent Decree, the Settling Defendants shall implement quality assurance, quality control and chain of custody procedures in accordance with "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA", 1988 (OSWER Directive 9355.3-01); "EPA NEIC Policies and Procedures Manual", May 1978, revised May 1986 (EPA 330/978-001-R); "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans", December 1980 (QAMS 005/80); "A

Compendium of Superfund Field Operations Methods", December 1987 (OSWER Directive 9355-0-14) "Data Quality Objectives for Remedial Response Activities", March 1987 (OSWER Directive 9355.0-7B); EPA's "Guidelines and Specifications for Preparing Quality Assurance Program Documentation", June 1, 1987; and amendments to these guidelines.

B. The Settling Defendants shall consult with EPA in planning for, and prior to, all sampling and analysis required by this Consent Decree, and any subsequent EPA-approved plans prepared as part of this Consent Decree. Further,the Settling Defendants shall not commence sampling until EPA approves the Remedial Design Work Plan and the Sampling and Analysis Plan (SAP).

C. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Consent Decree, the Settling Defendants shall:

1. Submit to the EPA Remedial Project Manager the selected laboratory's(ies') Quality Assurance Program Plan (QAPP) and their qualifications, which shall include, at a minimum, previous certifications, Performance Evaluation (PE) results, equipment lists and personnel resumes. The SAP must state that all protocols described therein take precedence over protocols listed in the Laboratory QAPP.

2. Ensure that EPA personnel and/or its authorized representatives are allowed reasonable access to the laboratory(ies), records and personnel utilized by the Settling

Defendants in implementing this Consent Decree.

3. Prepare a SAP, consisting of a Quality Assurance Project Plan (QAPjP) and a Field Sampling Plan (FSP), for sample collection, transportation, analysis, validation and reporting to be conducted pursuant to this Consent Decree. The SAP shall be submitted as part of the Remedial Design Work Plan to the EPA Remedial Project Manager for review and approval prior to commencing sampling and analysis. Each plan shall specify, for the phase of activity addressed, the data quality objectives (DQOs), sample collection and transportation procedures, data analysis methods, data reduction, data review, and reporting procedures. Selection of analytical methods shall be justified in conjunction with the DQOs. The guidelines referenced in Paragraph (A), above, shall be followed in the preparation of the SAP; additional guidance may be provided by EPA when applicable and/or requested by the Settling Defendants.

4. Ensure that the laboratory(ies) analyzing samples pursuant to this Consent Decree uses appropriate methods. If EPA Contract Lab Program (CLP) methods are selected, the laboratory(ies) shall use these methods and submit deliverables delineated in the current "Statement of Work of the EPA Contract Lab Program." If non-CLP methods are selected, all constituents and physical parameters shall be analyzed using methods that are specified (method and reference) and justified in the SAP. Non-CLP methods shall be fully described in the QAPjP and approved by the EPA Remedial Preject Manager prior to conducting any sampling

and analysis. This description shall include, at a minimum, the matrix, calibration, Quality Control (QC) samples (type and frequency), corrective measures, and deliverables.

5. Ensure that the laboratory(ies) analyzing samples pursuant to this Consent Decree agrees to demonstrate its capability to perform the selected analyses by analyzing PE samples, supplied by EPA. Analysis of PE samples may be waived by EPA if the laboratory(ies) satisfactorily analyzed PE samples using the selected methods within the six (6) months prior to analysis conducted pursuant to this Consent Decree. Documentation of such PE sample analysis shall be submitted to the EPA Remedial Project Manager for verification.

6. At the request of EPA, conduct one or more audits of the selected laboratory(ies) to verify analytical capability and compliance with the SAP. Auditors shall conduct lab audits at sometime during the time the laboratory(ies) is analyzing samples collected pursuant to this Consent Decree. The lab audit shall be conducted according to procedures available from the EPA Environmental Services Division Quality Assurance Branch (QA Branch). Audit reports shall be submitted to the EPA Remedial Project Manager within fifteen (15) days of completion of the audit. The Settling Defendants shall report serious deficiencies, including all those which adversely impact data quality, reliability or accuracy, and take action to correct such deficiencies within twenty-four (24) hours of the time the Settling Defendants know or should have known of the deficiency.

7. Conduct at least one field audit (to be described in the QAPjP) during initial sampling activities to verify that field samplers are correctly following sampling procedures described in the SAP. A report of the field audit shall be submitted to the EPA Remedial Project Manager within fifteen (15) days of completion of the audit. Settling Defendants shall report the scope of the audit and the deficiencies noted, and take action to correct such deficiencies within twenty-four (24) hours of the time the Settling Defendants know or should have known of the deficiency. EPA shall have the option to audit any stage of the field activities.

8. Provide data validation of analyses completed by the laboratory(ies), to determine data usability. If the data derived by CLP methods, the data validation shall be performed in accordance with the most recent National Functional Guidelines for Data Review and Region III Modifications (available from the QA Branch). For non-CLP methods, the data validation shall be performed as described in the SAP and in accordance with the QC data validation criteria set forth in that method. The quality assurance data validation reports shall be prepared using EPA Region III format (available from the QA Branch) and shall be submitted, along with the validated data summary sheets and the laboratory sample results, to the EPA Remedial Project Manager.

D. At the request of EPA, the Settling Defendants shall allow split or duplicate samples to be taken by EPA, and/or its authorized representatives, of any samples collected by the

Settling Defendants pursuant to this Consent Decree. The Settling Defendants shall notify EPA not less than thirty (30) days in advance of any such sample collection activity. In addition, EPA shall have the right to take any additional samples that EPA deems appropriate. At the request of the Settling Defendants, EPA shall allow split and/or duplicate samples to be taken by the Settling Defendants and/or their authorized representatives of any sample collected by EPA pursuant to this Consent Decree.

E. Within seven days of a request by EPA Settling Defendants shall submit to EPA 3 copies of the results of any sampling and/or test or other data obtained or generated by or on behalf of the Settling Defendants pursuant to this Consent Decree and requested by EPA .

F. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA and any other applicable statute or regulation.

X. ACCESS

A. Commencing upon the date of lodging of this Consent Decree, and to the extent the property is owned or access to the property is controlled by Settling Defendants, the Settling Defendants agree that the United States and their representatives, including EPA and its contractors, shall have

access at all times to the Site and any other property to which access is required for the implementation of this Consent Decree, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

1. Monitoring the Work;

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

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

4. Obtaining samples;

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

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

7. Assessing Settling Defendants' compliance with this Consent Decree.

B. To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Settling Defendants, Settling Defendants shall use best efforts to secure from such persons access for themselves, as well as for the United States and its representatives, including, but not limited to, EPA and their contractors, as necessary to effectuate this Consent Decree. If any access required to complete the Work is

not obtained within 45 days of the date of lodging of this Consent Decree, or within 45 days of the date EPA notifies the Settling Defendants in writing that additional access beyond that previously secured is necessary, Settling Defendants shall promptly notify the United States, and shall include in that notification a summary of the steps Settling Defendants have taken to attempt to obtain access. The United States may, in its unreviewable discretion, assist Settling Defendants in obtaining access. Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVII (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining access.

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

XI. REPORTING REQUIREMENTS

A. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA and the State five (5) copies each of a written monthly progress report that: (1) describes the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (2) includes all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous month; (3) identifies all work plans,

plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (4) describes all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next month and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (5) includes information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (6) includes any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; and (7) describes all activities, as approved by EPA under Section XXXI (Community Relations) undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next month. Settling Defendants shall submit these progress reports to EPA and the State by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the Settling Defendants pursuant to Paragraph B(2) of Section XV (Certification of Completion). If requested by EPA , Settling Defendants shall also provide briefings for EPA to discuss the progress of the Work.

B. The Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to,

implementation of work plans, no later than seven days prior to the performance of the activity. Notwithstanding the foregoing, the Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of data collection no later than 30 days prior to the performance of such activity.

C. In addition to the reporting required by CERCLA Section 103, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11004, upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of EPCRA, 42 U.S.C. § 11004, Settling Defendants shall, within 24 hours of the onset of such event, orally notify the EPA Remedial Project Manager or the Chief of the Delaware/Maryland Section of the Superfund Remedial Branch (in the event of the unavailability of the EPA Remedial Project Manager), or, in the event that neither the EPA Remedial Project Manager or the Chief of the Delaware/Maryland Section of the Superfund Remedial Branch is available, the EPA Region III hotline at (215) 597-9898. Within 20 days of the onset of such an event, Settling Defendants shall furnish to EPA and the State a written report, signed by the Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendants shall submit a report setting forth

all actions taken in response thereto.

D. Except as otherwise provided in this Consent Decree, Settling Defendants shall submit six (6) copies of all plans, reports, and data required by the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendants shall simultaneously submit two (2) copies of all such plans, reports and data to the State.

E. Plans, design documents, proposals, reports or other documents shall be signed by a Duly Authorized Representative of each of the Settling Defendants certifying the information as follows:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsbile for gathering the information, the information submitted is, to the best of my knowledge and belief, 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.

The Remedial Design Work Plan, Remedial Action Work Plan and any other work plan approved by EPA pursuant to this Consent Decree shall specify which documents shall be so certified.

XII. SUBMISSIONS REQUIRING AGENCY APPROVAL; STATE REVIEW AND COMMENT

A. Any plan, report, or other item which is required to be

submitted for approval by EPA pursuant to this Consent Decree shall be submitted to the State at the same time it is submitted to EPA. After review of any such plan, report or other item, EPA shall, after reasonable opportunity for review and comment by the State: (1) approve, in whole or in part, the submission; (2) approve the submission upon specified conditions; (3) modify the submission to cure the deficiencies; (4) direct that the Settling Defendants modify the submission; (5) disapprove, in whole or in part, the submission, notifying Settling Defendants of deficiencies; or (6) any combination of the above.

B. In the event of approval, approval upon conditions, or modification by EPA, Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution) with respect to the modifications or conditions made by EPA.

C. Upon receipt of a notice of disapproval or a notice requiring a modification, Settling Defendants shall, within 14 days or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval or a notice requiring a modification, Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

D. In the event that a resubmitted plan, report or other

item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to amend or develop the plan, report or other item. Subject only to their right to invoke procedures set forth in Section XX (Dispute Resolution), Settling Defendants shall implement any such plan, report, or item as amended or developed by EPA. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XXI (Stipulated Penalties) for any violations of this Consent Decree relating to any deficient portion of the submission.

E. If a plan, report, or item is disapproved by EPA because it is deemed substantially deficient by EPA, Settling Defendants shall be deemed to be in violation of the provision of this Consent Decree requiring the Settling Defendants to submit such plan, report, or item unless the Settling Defendants invoke dispute resolution and this Court overturns EPA's disapproval. The provisions of Section XX (Dispute Resolution) and Section XXI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution.

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

AR000138

report, or other item required to be submitted to EPA under this Consent Decree, the approved portion shall be enforceable under this Consent Decree.

XIII. PROJECT COORDINATOR/REMEDIAL PROJECT MANAGER

A. EPA has selected a Remedial Project Manager for this Site. The EPA Remedial Project Manager is the EPA representative to whom notices and other submissions are to be submitted pursuant to Section XXVII (Notices and Submission) of this Consent Decree. Within 20 days of lodging this Consent Decree, Settling Defendants will notify the EPA Remedial Project Manager, in writing, of the name, address and telephone number of its designated Project Coordinator. EPA shall have the right to change its Remedial Project Manager and Settling Defendants shall have the right to change their Project Coordinator. Any such change shall be accomplished by notifying the other party, in writing, at least 5 working days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinator shall be subject to acceptance by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendants' Project Coordinator shall not be acting as an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial

activities.

B. EPA may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. The EPA Remedial Project Manager shall have the authority lawfully vested in a Remedial Project Manager by the NCP. In addition, the EPA Remedial Project Manager shall have authority, consistent with the National Contingency Plan, to halt or redirect any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site may constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

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

XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

A. Within 30 days of entry of this Consent Decree, Settling Defendants shall establish and maintain financial security in the amount of $6,173,700.00 in one of the following forms:

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

(2) One or more letters of credit;

(3) A trust fund;

(4) A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated

corporations that have a substantial business relationship with at least one of the Settling Defendants; or

(5) A demonstration that the Settling Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f) (April 7, 1982, as amended May 2, 1986).

B. If the Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph A(4) of this Section XIV, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee, they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA, after a reasonable opportunity for review and comment by the State, determines at any time that the financial assurances provided pursuant to this Paragraph are inadequate, Settling Defendants shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph A of this Section XIV. Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

XV. CERTIFICATION OF COMPLETION

A. Completion of the Remedial Action

1. Within 90 days after Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Defendants shall so certify to the United States and the State and shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants and EPA. If, after the pre-certification inspection, the Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval; State Review and Comment) within 30 days of the inspection. In the report, a registered professional engineer ("RPE") and a Duly Authorized Representative of each of the Settling Defendants shall certify pursuant to Section XI.E that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a RPE and certified as required by Section XI.F. If, after completion of the pre-certification inspection and receipt and review of the written report, EPA determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendants in writing of the activities that must

undertaken to complete the Remedial Action and achieve the Performance Standards. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval; State Review and Comment). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution).

2. If EPA concludes, based on the initial or any subsequent Certification of Completion by Settling Defendants, that the Remedial Action has been fully performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXII (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree that continue beyond the Certification of Completion, including, but not limited to, access, Operation and Maintenance, record retention, indemnification, insurance, payment of Future Response Costs and penalties, and any work to be conducted under Section

(Additional Response Actions) and Section VIII (U.S. EPA Periodic Review), Section XI (Reporting Requirements), Section XXV (Access to Information) and Section XXXI (Community Relations).

B. Completion of the Work

1. Within 90 days after Settling Defendants conclude that all phases of the Work (including O & M), with the exception of the payment of Future Response Costs associated with this Paragraph, have been fully performed, Settling Defendants shall so certify to the United States by submitting a written report by a RPE certifying that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall also contain the certification required by Section XI.F. If, after review of the written report, EPA, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken to complete the Work. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval; State Review and Comment). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

2. If EPA concludes, based on the initial or any

AR000104

subsequent Certification of Completion by Settling Defendants that the Work has been fully performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in writing.

XVI. EMERGENCY RESPONSE

A. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material that constitutes an emergency situation or may present an immediate threat to the public health or welfare or the environment, Settling Defendants shall, subject to Paragraph B of this Section XVI, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA Remedial Project Manager, or, if the EPA Remedial Project Manager is unavailable, the Section Chief of the Delaware/Maryland Section, Superfund Remedial Branch. If neither of these persons is available, the Settling Defendants shall notify the EPA Region III Hotline at (215) 597-9898. Settling Defendants shall take such actions in consultation with the EPA Remedial Project Manager or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, or any other applicable plans or documents developed and approved pursuant to this Consent Decree. In the event that Settling Defendants fail to take sufficient response action as required by this Section, and EPA takes such action,

Settling Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVII (Reimbursement of Response Costs).

B. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action or to seek an order from the Court to protect human health, welfare and the environment or to prevent, abate, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XVII. REIMBURSEMENT OF RESPONSE COSTS

A. Within 30 days of the effective date of this Consent Decree, Settling Defendants shall:

1. Pay to the United States $602,309.93, plus interestand DOJ costs in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," and referencing CERCLA Number [Site/Spill ID Number] and DOJ Case Number 90-11-2-749 in reimbursement of Past Response Costs. The Settling Defendants shall forward the certified check(s) to United States Environmental Protection Agency, Region III, Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA 15251-6515 and shall send copies of the check to the United States and the Regional Hearing Clerk (3RC00), United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

B. Settling Defendants shall reimburse the United States for all Future Response Costs not inconsistent with the National Contingency Plan incurred by the United States . The United States will send Settling Defendants on an annual basis a bill requiring payment that includes a cost summary, setting forth direct and indirect costs incurred by EPA, DOJ and their contractors. Settling Defendants shall make all payments within 30 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph C of this Section. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph A of this Section.

C. Settling Defendants may contest payment of any Future Response Costs under Paragraph B of this Section if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendants shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph A of this Section. Simultaneously, the Settling Defendants shall establish an interest bearing escrow account in a bank duly chartered in

activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States .

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

C. No later than 15 days before commencing any on-site work, Settling Defendants shall secure and maintain or shall ensure that their Supervising Contractor, contractors and subcontractors secure, and maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph A.2 of Section XV (Certification of

1 timely payments under this Section.

2 XVIII. INDEMNIFICATION AND INSURANCE

3 A. The United States does not assume any liability by
4 entering into this agreement or by virtue of any designation of
5 Settling Defendants as EPA's designated representatives under
6 Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Settling
7 Defendants hereby indemnify, save and hold harmless the United
8 States and its officials, agents, employees, contractors,
9 subcontractors, or representatives for or from any and all claims
10 or causes of action arising from, or on account of, acts or
11 omissions of Settling Defendants, their officers, directors,
12 employees, agents, contractors, subcontractors, and any persons
13 acting on their behalf or under their control, in carrying out
14 activities pursuant to this Consent Decree, including, but not
15 limited to, any claims arising from any designation of Settling
16 Defendants as EPA's representatives under Section 104(e) of
17 CERCLA and any claim for just compensation arising out of
18 performance of this Consent Decree. Further, the Settling
19 Defendants agree to pay the United States all costs the United
20 States incurs including, but not limited to, attorneys fees and
21 other expenses of litigation and settlement arising from, or on
22 account of, claims made against the United States based on acts
23 or omissions of Settling Defendants, their officers, directors,
24 employees, agents, contractors, subcontractors, and any persons
25 acting on their behalf or under their control, in carrying out

the State of Delaware and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendants shall send to the United States, as provided in Section XXVII (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established, a bank statement showing the initial balance of the escrow account and a copy of the escrow agreement establishing the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendants may initiate the dispute resolution procedures set forth in Section XX (Dispute Resolution). Failure to initiate the dispute resolution procedures set forth in Section XX within the 30 day period following receipt of the bill shall be a waiver of Settling Defendants' right to initiate dispute resolution with respect to that issue. If the Settling Defendants fail to initiate the dispute resolution procedures set forth in Section XX within the 30 day period following receipt of the bill, then within 5 days of such 30th day, the Settling Defendants shall direct the escrow holder to remit the escrowed monies (with accrued interest) to the United States in the manner described in Paragraph A of this Section. If the United States prevails in the dispute then within 5 days of the resolution of the dispute, the Settling Defendants shall pay the sums due (wit

accrued interest) to the United States in the manner described in Paragraph A of this Section. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall direct the escrow holder to remit payment for that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph A of this Section; Settling Defendants shall be disbursed the balance of the escrow account. The Dispute Resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

D. In the event that the payments required by Paragraph A of this Section are not made within 30 days of the effective date of this Consent Decree or the payments required by Paragraph B of this Section within 30 days of the Settling Defendants' receipt of the bill, Settling Defendants shall pay interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest on Past Response Costs shall begin to accrue 30 days after the effective date of the Consent Decree. The interest on Future Response Costs shall begin to accrue 30 days after the Settling Defendants' receipt of the bill. Payments made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Settling Defendants' failure to make

Completion) comprehensive general liability insurance with limits of 5 million dollars, combined single limit, naming as additional insured the United States . No later than 15 days after the effective date of this Consent Decree, Settling Defendants shall secure of automobile liability insurance in the amounts of $500,000 to EPA and shall maintain such insurance until the first anniversary of EPA's certification of completion of the Remedial Action pursuant to Paragraph A.2 of Section XV (Certification of Completion). In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, and shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA certificates of comprehensive general liability and automobile insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Settling Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to matters so insured by that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not

maintained by the contractor or subcontractor. Settling Defendants may satisfy the provisions of this Paragraph C if they submits to EPA for approval one of the financial assurance mechanisms of Section XIV (Assurances of Ability to Complete Work) in at least the amounts stated in this Paragraph C demonstrating that Settling Defendants are able to pay any claims arising out of Settling Defendants' performance of their obligations under this Consent Decree. Such financial assurance mechanism shall meet all of the requirements of Section XIV (Assurances of Ability to Complete Work). If Settling Defendants seek to utilize Section XIV (Assurance of Ability to Complete Work) to satisfy the provisions of this paragraph C, they must demonstrate an ability to pay above and beyond that required by the obligations of Section XIV (Assurance of Ability to Complete Work).

XIX. FORCE MAJEURE

A. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of each and every Settling Defendant or of any entity controlled by such Settling Defendants, including, but not limited to, their contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to

anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work, failure to attain the Performance Standards, or increased costs.

B. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify by telephone the EPA Remedial Project Manager or, in his or her absence, Chief of the Delaware/Maryland Section, Superfund Remedial Branch or, in the event both of EPA's designated representatives are unavailable, the EPA Region III Emergency Hotline at (215) 597-9898, within 48 hours of when Settling Defendants or any one of them first knew or should have known that the event might cause a delay. Within 5 days thereafter, Settling Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the obligations and deadlines Settling Defendants claim are affected by the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a

statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include, with any notice, all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event. Settling Defendants shall be deemed to have notice of any circumstance of which their contractors or subcontractors had or should have had notice.

C. If EPA, after a reasonable opportunity for review and comment by the State, 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 and EPA will notify the Settling Defendants of the length of the extension, if any, affected by the force majeure event for performance of the obligations. An extension of the time for performance of the obligation(s) affected by the force majeure event shall not, of itself, extend the time for performance of any otherobligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision.

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

XX. DISPUTE RESOLUTION

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

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

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

C.1. 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, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under paragraph D or E.

C.2. Within fourteen (14) days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph

D. or E.

C.3. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph D or E, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs D and E.

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

1. 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 Paragraph and Paragraph C, above. Where appropriate, EPA may

allow submission of supplemental statements of position by the parties to the dispute.

2. The Associate Director for Superfund of the Hazardous Waste Management Division of EPA Region III will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph D.1 of this Section. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraphs D.3 and D.4 of this Section.

3. Any administrative decision by EPA pursuant to Paragraph D.2 of this Section shall be reviewable by this Court, provided that a notice of judicial appeal under this Section XX is filed by the Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' notice of judicial appeal.

4. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of EPA 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 Paragraphs D.1 and D.2 of this Section XX.

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

1. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph C of this Section, the Associate Director for Superfund of the Hazardous Waste Management Division of EPA Region III will issue a final decision resolving the dispute. The EPA's decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on the Plaintiffs a notice of judicial appeal setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' notice of judicial appeal.

2. Notwithstanding Paragraph M of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law. In any such proceeding, the Settling Defendants shall bear the burden of coming forward with evidence and the burden of persuasion.

F. The invocation of formal dispute resolution procedures under this Section shall not of itself extend, postpone,

affect in any way any obligation of the Settling Defendants under this Consent Decree, except that payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute as provided in Paragraph H of Section XXI. Notwithstanding the stay of payment, stipulated penalties, including interest, shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties).

XXI. STIPULATED PENALTIES

A. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs B and C of this Section to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XIX (Force Majeure). "Compliance" by Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, 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.

B. The following stipulated penalties shall be payable per violation per day to the United States for any noncompliance

identified in Paragraph B.2, below, of this Section:

1. Penalty Per Violation Per Day	Period of Noncompliance
$5,000	1st through 14th day
$10,000	15th through 30th day
$15,000	31st day and beyond

2. Failure to comply with the requirements of Section VI (Performance of the Work by Settling Defendants), Section VII (Additional Response Actions), Section VIII (U.S. EPA Periodic Review), Section IX (Quality Assurance), Section XII (Submissions Requiring Agency Approval), and Section XVI (Emergency Response).

C. The following stipulated penalties shall be payable per violation per day to the United States for any noncompliance identified in Paragraph C.2, below of this Section:

1. Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st day and beyond
$2,000	1st through 30th day
$3,000	31st day and beyond

2. Failure to comply with the requirements of Section V (General Provisions), Section XI (Reporting Requirements), Section XIV (Assurance of Ability to Complete Work), Section XV (Certification of Completion), and Section XIX (Force Majeure).

D. 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

correction of the noncompliance or completion of the activity. Separate penalties shall accrue for each separate violation of this Consent Decree.

E. 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 same and describe the noncompliance. However, penalties shall accrue as provided in the proceeding Paragraph whether or not EPA has notified the Settling Defendants of a violation. EPA may send the Settling Defendants a written demand for the payment of the penalties.

F. All penalties owed to the United States under this section shall be due and payable within 30 days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XX (Dispute Resolution). All payments under this Section shall be paid by certified check made payable to "EPA Hazardous Substance Superfund," shall be mailed to United States Environmental Protection Agency, Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA 15251-6515 and shall reference CERCLA Number [Site/Spill ID Number] and DOJ Case Number 90-11-2-749. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVII (Notices and Submissions).

G. Neither the invocation of dispute resolution proceedings

under Section XX (Dispute Resolution) nor the payment of penalties shall alter in any way Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

H. Penalties shall continue to accrue as provided in Paragraph D of this Section during any dispute resolution period, and shall be paid as follows:

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

2. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to the United States within 15 days of receipt of the Court's decision or order, except as provided in Subparagraph (3) below;

3. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owed to the United States, into an interest-bearing escrow account established in accordance with the procedures set forth in Section XVII.C., within 15 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,

including interest and penalties, to EPA and/or Settling Defendants in accordance with the final appellate court decision.

I. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties as well as interest . Settling Defendants shall pay interest on the unpaid balance, which shall begin to accrue on the date of the demand made pursuant to paragraph F of this Section, at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this 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, 42 U.S.C. § 9622(l) .

J. No payments made under this Section shall be tax deductible for Federal tax purposes.

XXII. COVENANTS NOT TO SUE BY PLAINTIFF

A. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraphs B, C, and E of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to

future liability these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph A of Section XVII (Reimbursement of Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph A.2 of Section XV (Certification of Completion). These covenants not to sue with respect to each Settling Defendant are conditioned upon the complete and satisfactory performance by that Settling Defendant of its obligations under this Consent Decree; however this does not affect Settling Defendants' obligations under Section V.B.2. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

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

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

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

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

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

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

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

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

D. For purposes of Paragraph B of this Section, the information and the conditions known to EPA shall include only that information and those conditions set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph C of this

Section, the information and the conditions known to EPA shall include only that information and those conditions set forth in the Record of Decision, the administrative record supporting the Record of Decision, and any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

E. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph A of this Section. The United States reserves, and this Consent Decree is without prejudice to, all rights, (including, but not limited to, causes of action under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a)) against Settling Defendants with respect to all other matters, including but not limited to, the following:

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

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

(3) liability for damages for injury to, destruction of, or loss of natural resources;

(4) liability for response costs that have been or may be incurred by federal natural resources trustees;

(5) criminal liability;

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

Action; and

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

XXIII. COVENANTS BY SETTLING DEFENDANTS

Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to, 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), 111, 112, 113, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, 9613, or any other provision of law, [any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 or any claims related to the Site, or any claims arising out of response activities at the Site. However, the Settling Defendants reserve, and this Consent Decree is without prejudice to, actions against the United States based on negligent action taken directly by the United States (not including oversight or approval of the Settling Defendants plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than

CERCLA. 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).

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

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

B. With regard to claims for contribution against Settling Defendants for matters addressed in this Consent Decree, the Parties hereto agree that the Settling Defendants are entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

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

suit or claim. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial. Settling Defendants acknowledge that the United States has no obligation to defend them in any suit or claim for contribution.

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

XXV. ACCESS TO INFORMATION

A. Settling Defendants shall provide to EPA , upon request, copies of all documents and information within their possession

or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA , for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

B. 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). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, the public may be given access to such documents or information without further notice to Settling Defendants. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal courts in

actions involving the United States. If the Settling Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the nature and basis of the privilege asserted by Settling Defendants. However, no documents, records or information created, generated or collected pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

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

XXVI. RETENTION OF RECORDS

A. Each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person, including any Settling Defendant, for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary, until 10 years after the Settling

Defendants' receipt of EPA's notification pursuant to Paragraph B.2 of Section XV (Certification of Completion). Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph B.2 of Section XV (Certification of Completion).

B. Upon conclusion of this document retention period, Settling Defendants shall notify the United States at least 90 days prior to the destruction of any such records, documents or information, and, upon request of EPA Settling Defendants shall deliver all such documents, records and information to EPA. In no event shall Settling Defendants destroy such records or documents until EPA responds in writing approving such destruction.

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

XXVII. NOTICES AND SUBMISSIONS

A. 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 specified in the particular Section of this Consent Decree at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Consent Decree with respect to the United States, EPA, and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DOJ # _____

and

LOURDES del CARMEN RODRIGUEZ (3RC23)
Office of Regional Counsel
United States Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

As to EPA:

ROBERTA RICCIO (3HW25)
EPA Remedial Project Manager
United States Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

As to the Settling Defendants:

[Name]
Settling Defendants' Project Coordinator
[Address]

XXVIII. EFFECTIVE DATE

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

XXIX. RETENTION OF JURISDICTION

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

XXX. APPENDICES

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

"Appendix A" is the ROD.

"Appendix B" is the map of the Site.

XXXI. COMMUNITY RELATIONS

Settling Defendants shall cooperate with EPA in providing information regarding the Work to the public. As requested by EPA , Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXII. MODIFICATION

A. Schedules for completion of the Work specified in this Consent Decree may be modified by agreement of the Parties. All such modifications shall be made in writing.

B. 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.

C. Modifications to the Remedial Design Work Plan and the Remedial Action Work Plan that do not materially alter the requirements of those documents may be made by written agreement between EPA, and the Settling Defendants.

D. Nothing in this Section shall be deemed to alter the Court's power to enforce, supervise or modify this Consent Decree.

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

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

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

XXXIV. SIGNATORIES/SERVICE

A. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice of the United States 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.

B. Each Settling Defendant hereby agrees not to oppose

entry of this Consent Decree by this Court or challenge any provision of this Consent Decree.

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

SO ORDERED THIS _____ DAY OF _____, 19__.

_____
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. _____, relating to the NCR Corporation (Millsboro Plant) Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: _____

_____
[Name]

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

_____
[Name]
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

_____
[Name]
United States Attorney
_____ District of _____

_____
[Name]
Assistant United States Attorney
_____District of _____
U.S. Department of Justice

_____
EDWIN B. ERICKSON
Regional Administrator, Region III
U.S. Environmental Protection
Agency
841 Chestnut Building
Philadelphia, PA 19107

_____
MARCIA E. MULKEY
Regional Counsel
U.S. Environmental Protection
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841 Chestnut Building
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_____
LOURDES DEL CARMEN RODRIGUEZ
Assistant Regional Counsel

AR000188

LOURDES DEL CARMEN RODRIGUEZ
Assistant Regional Counsel
U.S. Environmental Protection
Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. _____, relating
3 to the _____ Superfund Site.

4 FOR _____ COMPANY, INC. */

5 Date: _____ _____
6 [Name -- Please Type]
7 [Title -- Please Type]
8 [Address -- Please Type]

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

11 Name: [Please Type]
12 Title: _____
13 Address: _____