

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE

|                                    |   |                       |
|------------------------------------|---|-----------------------|
| -----                              | X |                       |
| UNITED STATES OF AMERICA           | : |                       |
| and STATE OF MAINE,                | : |                       |
|                                    | : |                       |
| Plaintiffs,                        | : |                       |
|                                    | : | Civil No. 1:09-cv-482 |
| v.                                 | : |                       |
|                                    | : |                       |
| ALLEN GREIG & PERRY, INC., et al., | : |                       |
|                                    | : |                       |
| Defendants.                        | : |                       |
| -----                              | X |                       |

**CONSENT DECREE**

**WEST SITE/HOWS CORNER SUPERFUND SITE**

TABLE OF CONTENTS

|         |  |    |
|---------|--|----|
| I.      | BACKGROUND .....   | 1  |
| II.     | JURISDICTION .....   | 3  |
| III.    | PARTIES BOUND .....  | 3  |
| IV.     | DEFINITIONS .....  | 3  |
| V.      | GENERAL PROVISIONS .....   | 8  |
| VI.     | PERFORMANCE OF THE WORK BY PERFORMING SETTLING DEFENDANTS .....      | 10 |
| VII.    | REMEDY REVIEW .....  | 13 |
| VIII.   | QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS .....                 | 14 |
| IX.     | ACCESS AND INSTITUTIONAL CONTROLS .....                              | 16 |
| X.      | REPORTING REQUIREMENTS .....   | 20 |
| XI.     | EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS .....                    | 21 |
| XII.    | PROJECT COORDINATORS .....   | 23 |
| XIII.   | ASSURANCE OF ABILITY TO COMPLETE WORK .....                          | 23 |
| XIV.    | CERTIFICATION OF COMPLETION .....                                    | 26 |
| XV.     | EMERGENCY RESPONSE .....   | 28 |
| XVI.    | PERFORMANCE OF NATURAL RESOURCE RESTORATION WORK .....               | 28 |
| XVII.   | PAYMENTS .....   | 28 |
| XVIII.  | MIXED FUNDING .....  | 35 |
| XIX.    | INDEMNIFICATION AND INSURANCE .....                                  | 36 |
| XX.     | FORCE MAJEURE .....  | 38 |
| XXI.    | DISPUTE RESOLUTION .....   | 39 |
| XXII.   | STIPULATED PENALTIES .....   | 42 |
| XXIII.  | COVENANTS BY PLAINTIFFS .....  | 45 |
| XXIV.   | COVENANTS BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCIES ..... | 50 |
| XXV.    | EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION .....                  | 51 |
| XXVI.   | ACCESS TO INFORMATION .....  | 53 |
| XXVII.  | RETENTION OF RECORDS .....   | 53 |
| XXVIII. | NOTICES AND SUBMISSIONS .....  | 54 |
| XXIX.   | EFFECTIVE DATE .....   | 56 |
| XXX.    | RETENTION OF JURISDICTION .....                                      | 56 |
| XXXI.   | APPENDICES .....   | 56 |
| XXXII.  | COMMUNITY RELATIONS .....  | 56 |
| XXXIII. | MODIFICATION .....   | 57 |
| XXXIV.  | LODGING AND OPPORTUNITY FOR PUBLIC COMMENT .....                     | 57 |
| XXXV.   | SIGNATORIES/SERVICE .....  | 57 |
| XXXVI.  | FINAL JUDGMENT .....   | 58 |

I. BACKGROUND

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

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the West Site/Hows Corner Superfund Site in Plymouth, Maine (“Site”), together with accrued interest; and (2) performance of studies and response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (“NCP”).

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Maine (the “State”) on May 7, 2007, of negotiations with potentially responsible parties regarding the implementation of a portion of the remedial design and the complete remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. The State has also filed a complaint against the defendants and the United States in this Court alleging that the defendants and Settling Federal Agencies are liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and 38 M.R.S.A. §§ 1362 and 1367.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the National Oceanic and Atmospheric Administration and the United States Department of the Interior on May 7, 2007, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

F. The defendants that have entered into this Consent Decree (“Settling Defendants”) do not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaints, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment. Settling Federal Agencies do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by the Settling Defendants or any claim by the State.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 29, 1995, 60 Fed. Reg. 50435.

H. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, EPA and a group of Potentially Responsible Parties (“PRPs”) at the Site, on June 24, 2000, entered into an Administrative Order on Consent to perform a Remedial Investigation and Feasibility Study (“RI/FS AOC”) for the Site pursuant to 40 C.F.R. § 300.430.

I. The group of PRPs completed a Remedial Investigation (“RI”) Report in 2001,

and completed a Feasibility Study (“FS”) Report in 2002.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on July 5, 2002, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which EPA based the selection of the response action.

K. The decision by EPA on the remedial action to be implemented at the Site is embodied in an interim Record of Decision (“2002 ROD”), executed on September 24, 2002 on which the State has given its concurrence.

L. On May 5, 2004, EPA and a group of PRPs at the Site entered into an Administrative Order on Consent for Remedial Design (“RD AOC”) to perform a portion of the remedial design for the Site.

M. The RD AOC also provided for five federal PRPs (the “Settling Federal Agencies” or “SFAs”) to pay the PRPs for the SFAs’ share of costs of the Remedial Design and the Covered Institutional Controls (Remedial Design and Covered Institutional Controls are defined in the RD AOC).

N. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the final proposed plan for remedial action on May 23, 2006 in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which EPA based the selection of the response action.

O. A final Record of Decision (“2006 ROD”) was executed on September 28, 2006 on which the State has given its concurrence. Both the 2002 and 2006 RODs include EPA’s explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary of the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

P. The 2006 ROD included a technical impracticability waiver that waives certain chemical-specific cleanup standards for Source Area Groundwater.

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

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

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

interest.

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

## II. JURISDICTION

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

## III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and the State 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.

3. Performing Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work required by this Consent Decree and to each person representing any Performing 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. Performing 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. Performing 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 Performing Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

## IV. DEFINITIONS

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

“2002 Interim Record of Decision” or “2002 ROD” shall mean the EPA Record of Decision relating to the Site signed on September 24, 2002 by the Regional Administrator, EPA Region 1, or his/her delegate, and all attachments thereto. The 2002 ROD is attached in Appendix A.

“2006 Record of Decision” or “2006 ROD” shall mean the EPA Record of Decision relating to the Site signed on September 28, 2006 by the Regional Administrator, EPA Region 1, or his/her delegate, and all attachments thereto. The 2006 ROD is attached in Appendix B.

“Cashout Settling Defendants” shall mean those Parties identified in Appendix F.

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

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

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“DOI” shall mean the United States Department of the Interior and any successor departments, agencies or instrumentalities of the United States.

“Effective Date” shall be the effective date of this Consent Decree as provided in Paragraph 125.

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

“EPA Future Oversight Costs” shall mean all costs, including but not limited to direct and indirect costs, that EPA and its representatives (including contractors) incur after the Effective Date of the Consent Decree in conducting the following activities: reviewing, discussing, commenting on and attending meetings related to plans, proposals, studies, reports or other items related to the Work; verifying the Work; and monitoring, supervising and overseeing Performing Settling Defendants’ implementation of the Work and compliance with the Consent Decree relating to the Work. EPA Future Oversight Costs shall include, but not be limited to, payroll costs, costs incurred by EPA and its representatives (including contractors) under or in connection with a contract or arrangement for technical assistance in overseeing and reviewing the conduct of activities required under the Consent Decree, travel costs, laboratory costs, technical support costs, interagency and intergovernmental agreement costs (including ATSDR costs), costs under a cooperative agreement with the State, and data management costs, insofar as such costs are incurred for activities listed in the first sentence of this definition.

“EPA Future Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that the United States incurs after the Effective Date pursuant to the provisions of this Consent Decree other than those costs specifically included in the definition of EPA Future Oversight Costs. EPA Future Response Costs shall include but not be limited to costs incurred to enforce the Consent Decree (including dispute resolution); costs incurred pursuant to Sections VII (Remedy Review) (except costs related to oversight of Performing Settling Defendants’ field activities required under Section VII (Remedy Review)), IX (Access and Institutional Controls) (including the cost of attorney time and monies paid to secure access and/or to secure or implement institutional controls, including the amount of just compensation), XV (Emergency Response), and Paragraph 105 (Work Takeover); community relations costs; enforcement support costs; records management costs; ATSDR costs other than those specifically included as EPA Future Oversight Costs; and accrued Interest.

“Hazardous Waste Material” shall mean (1) any “hazardous substance” under

Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (3) any “hazardous substance” under 38 M.R.S.A. § 1362(1).

“Hydraulic Containment Remedial Design” shall mean the design required pursuant to the RD AOC that was given conditional approval by EPA on September 17, 2007, and final approval on October 22, 2007.

“Institutional Control Zone” shall mean the area where institutional controls are required pursuant to the 2002 and 2006 RODs as defined in the 2002 ROD.

“Interest,” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“MEDEP” shall mean the Maine Department of Environmental Protection and any successor departments or agencies of the State.

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

“Natural Resources” shall mean “natural resources” as that term is defined in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

“Natural Resource Damages” shall mean damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such damages, as provided in Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C), and, for purposes of the State’s claim for Natural Resource Damages, damages for injury to, destruction of, loss of or loss of use of natural resources of the State resulting from hazardous substances at the Site or from the acts or omissions of a responsible party with respect to those hazardous substances, and for the reasonable costs of assessing natural resources damages, as provided in 38 M.R.S.A. § 1367.

“NR Trustees” shall mean the designated federal and state officials who may act on behalf of the public as trustees for the Natural Resources regarding the Site, namely the National Oceanic and Atmospheric Administration and DOI represented by the Fish and Wildlife Service as the federal Trustees for Natural Resources regarding the Site, and the Commissioner of MEDEP, the Commissioner of the Maine Department of Inland Fisheries, the Commissioner of the Maine Department of Conservation, and the Commissioner of the Maine Department of Marine Resources as the State Trustees for Natural Resources regarding the Site.

“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, the Statement of Work (SOW), and the statement of work under the RD AOC.

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

“Parties” shall mean the United States, the State of Maine, and the Settling Defendants.

“Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through the Effective Date, plus Interest accrued on such costs through such date.

“Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section L of the 2002 and 2006 RODs and Section IV of the SOW.

“Performing Settling Defendants” shall mean Central Maine Power Company and General Electric Company.

“Plaintiffs” shall mean the United States and the State of Maine.

“Preauthorization Decision Document” shall mean the document attached as Appendix G.

“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).

“RD AOC” shall mean the Administrative Order by Consent for Remedial Design, U.S. EPA Docket No. CERCLA-01-2004-0058, entered into by EPA, the State of Maine, and a group of Potentially Responsible Parties on May 5, 2004. EPA certified completion of the work conducted under the RD AOC by letter dated May 7, 2009.

“Remedial Action” shall mean those activities, except for Operation and Maintenance, to be undertaken by the Performing Settling Defendants to implement the 2002 and 2006 RODs, in accordance with the SOW, the Hydraulic Containment Remedial Design, final Remedial Design and Remedial Action Work Plans, and other plans approved by EPA under this Consent Decree or the RD AOC.

“Remedial Action Work Plan” shall mean the document developed pursuant to Paragraph 11 of the Consent Decree and approved by EPA, and any amendments thereto.

“Remedial Design” shall mean those activities undertaken by the Performing Settling Defendants to develop the final plans and specifications for the Remedial Action including the Hydraulic Containment Remedial Design and any other plans approved under the RD AOC.

“Remedial Design Work Plans” shall mean the documents developed pursuant to Paragraph 10 of the Consent Decree and the SOW and approved by EPA, and any amendments thereto.

“RI/FS AOC” shall mean the Administrative Order By Consent for Remedial Investigation/Feasibility Study, U.S. EPA Docket No. CERCLA 1-2000-0004, entered into by EPA, the State of Maine, and a group of Potentially Responsible Parties on June 27, 2000. EPA certified completion of the work conducted under the RI/FS AOC by letter dated May 7, 2009.

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

“Settling Defendants” shall mean the Performing Settling Defendants and the Cashout Settling Defendants.

“Settling Federal Agencies” shall mean the following departments, agencies, and instrumentalities of the United States: the United States Department of the Army, the United



States Coast Guard, the United States Defense Logistics Agency, the United States Air Force and the Army and Air Force Exchange Service (“AAFES”), which are resolving any claims which have been or could be asserted against these Settling Federal Agencies with regard to this Site as provided in this Consent Decree.

“Site” shall mean the West Site/Hows Corner Superfund Site located in Plymouth, Penobscot County, Maine, including the approximately 17 acres of land formerly owned by George West Jr., and all areas where the groundwater contamination has come to be located, and depicted generally on the map attached as Appendix C.

“Source Area” shall mean the fenced area on the former George West Jr. property as depicted in Figure 2 in the 2002 ROD. It overlaps but is not coincident with the Source Area Groundwater.

“Source Area Groundwater” shall mean all groundwater in which VOCs were present at concentrations greater than or equal to ten parts per million (ppm), which is equivalent to 10,000 micrograms per liter ( $\mu\text{g/L}$ ), at the time of the 2002 ROD as shown on Figure 2 of the 2002 ROD. It is noted for informational purposes only, the area defined by the ten ppm contour shown on Figure 2 of the 2002 ROD has decreased since the 2002 ROD as shown on Figure 19 of the 2006 ROD.

“State” shall mean the State of Maine.

“State Future Oversight Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that MEDEP and its representatives (including contractors) incur after the Effective Date of the Consent Decree in conducting the following activities: reviewing, discussing, commenting on and attending meetings related to plans, proposals, studies, reports or other items related to the Work; verifying the Work; and monitoring, supervising and overseeing Performing Settling Defendants’ implementation of the Work and compliance with the Consent Decree relating to the Work. State Future Oversight Costs shall include, but not be limited to, payroll costs, costs incurred by MEDEP and its representatives (including contractors) under or in connection with a contract or arrangement for technical assistance in overseeing and reviewing the conduct of activities required under the Consent Decree, travel costs, laboratory costs, technical support costs, State interagency and State intergovernmental agreement costs and data management costs, insofar as such costs are incurred for activities listed in the first sentence of this definition.

“State Future Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that the State incurs after the Effective Date pursuant to the provisions of this Consent Decree other than those costs specifically included in the definition of State Future Oversight Costs. State Future Response Costs shall include but not be limited to costs incurred to enforce the Consent Decree (including dispute resolution); costs incurred pursuant to Sections VII (Remedy Review) (except costs related to oversight of Performing Settling Defendants’ field activities required under Section VII (Remedy Review)), IX (Access and Institutional Controls) (including the cost of attorney time and monies paid to secure access and/or to secure or implement institutional controls, including the amount of just compensation), XV (Emergency Response), and Paragraph 105 (Work Takeover); community relations costs; enforcement support costs; records management costs; and accrued Interest. State Future Response Costs shall not include State Future Oversight Costs.

“State Natural Resources Restoration Work” shall mean the work to be performed under Appendix H [Natural Resources Damages Compensation Plan and Settlement Agreement].

“State Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, but excluding costs of assessing natural resource damages, that the State has paid at or in connection with the Site through the Effective Date, plus Interest accrued on such costs through the Effective Date.

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

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

“Technical Impracticability Waiver” or “TI Waiver” shall mean the waiver of certain chemical-specific applicable or relevant and appropriate requirements for Source Area Groundwater included in the 2006 ROD.

“Technical Impracticability Zone” or “TI Zone” shall mean the area where attainment of certain groundwater Performance Standards has been waived by EPA. This area includes the Source Area Groundwater as described in the 2002 ROD and, geographically, extends beyond the Source Area to run coincident with property lines, to the extent possible. Groundwater Performance Standards shall be attained at the TI Zone boundary and beyond. See Figure 19 of the 2006 ROD for a map of the TI Zone.

“Trust” shall mean the West Site/Hows Corner Superfund Site Trust Account to be established by the Performing Settling Defendants to receive certain settlement and other payments regarding the Site from the Cashout Settling Defendants and Settling Federal Agencies, or such successor trust account as may be established by the Performing Settling Defendants.

“United States” shall mean the United States of America, including all of its departments, agencies, and instrumentalities which includes without limitation EPA, Settling Federal Agencies, and any federal natural resource trustee.

“West Site/Hows Corner Special Account” shall mean the special account established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

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

## V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Performing Settling Defendants, to reimburse certain response costs of the Plaintiffs, including oversight costs, and to resolve the Plaintiffs’ claims for natural resource damages against Settling Defendants, and the claims of the State and Settling Defendants which have been or could have been asserted against the United

States with regard to this Site as provided in this Consent Decree.

6. Commitments by Settling Defendants and Settling Federal Agencies.

a. Performing Settling Defendants shall partially finance and shall perform the Work in accordance with this Consent Decree, the 2002 and 2006 RODs, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Performing Settling Defendants and approved by EPA pursuant to this Consent Decree and the RD AOC. Performing Settling Defendants shall also reimburse the United States for EPA Future Response Costs and the State for State Past Response Costs, State Future Response Costs, and State Future Oversight Costs as provided in this Consent Decree. Performing Settling Defendants shall also compensate the United States and the State for Natural Resource Damages.

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

c. Cashout Settling Defendants shall, as provided herein, pay a share of the costs of the Work, State Past Response Costs, EPA and State Future Response Costs, and State Future Oversight Costs, and shall compensate the United States and the State for Natural Resource Damages.

d. Settling Federal Agencies shall, as provided herein, pay a share of the costs of the Work, State Past Response Costs, EPA and State Future Response Costs, and State Future Oversight Costs, and shall compensate the United States and the State for Natural Resource Damages.

7. Compliance With Applicable Law. All activities undertaken by Performing Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Performing Settling Defendants must also comply with all applicable or relevant and appropriate requirements (“ARARs”) of all Federal and State environmental laws delineated in the 2002 and 2006 RODs and the SOW, except for those requirements that have been waived pursuant to the TI Waiver. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Performing Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

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

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

VI. PERFORMANCE OF THE WORK BY PERFORMING SETTling DEFENDANTS

9. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Performing Settling Defendants pursuant to Sections VI (Performance of the Work By Performing Settling Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA after a reasonable opportunity for review and comment by the State. Within 35 days after the lodging of this Consent Decree, Performing Settling Defendants shall notify EPA and the State in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Performing Settling Defendants shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Performing Settling Defendants propose to change a Supervising Contractor, Performing Settling Defendants shall give such notice to EPA and the State and must obtain an authorization to proceed 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.

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

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

10. Remedial Design.

a. Consistent with the deadlines provided in the SOW, Performing Settling Defendants shall submit to EPA and the State work plans for the design of the Remedial Action at the Site ("Remedial Design Work Plans"). The Remedial Design Work Plans shall provide for

design of the remedy set forth in the 2002 and 2006 RODs, in accordance with the SOW and for achievement of the Performance Standards and other requirements set forth in the RODs, this Consent Decree and/or the SOW. Upon its approval by EPA, the Remedial Design Work Plans shall be incorporated into and become enforceable under this Consent Decree. The parties acknowledge that the remedial design required under the RD AOC that addresses the design of the groundwater hydraulic containment system has been approved by EPA as part of the Hydraulic Containment Remedial Design and shall be used for a portion of the design of the Remedial Action required under this Consent Decree. The Hydraulic Containment Remedial Design is incorporated into and is enforceable under this Consent Decree. Consistent with the deadlines in the SOW, the Performing Settling Defendants shall submit to EPA and the State a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

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

11. Remedial Action.

a. Consistent with the deadlines provided in the SOW, Performing Settling Defendants shall submit to EPA and the State the deliverables required in the SOW, including but not limited to, work plans for the performance of the Remedial Action at the Site (“Remedial Action Work Plan”). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the 2002 and 2006 RODs and achievement of the Performance Standards in accordance with this Consent Decree, the RODs, the SOW, the Hydraulic Containment Remedial Design and the design plans and specifications developed in accordance with the Remedial Design Work Plans and the RD AOC approved by EPA. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plan, Performing Settling Defendants shall submit to EPA and the State a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120. The Performing Settling Defendants shall submit to EPA for approval all other Remedial Action plans, submittals, and deliverables described in the SOW, in accordance with the schedule set forth in the SOW and the approved Remedial Action Work Plan.

b. Upon approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the State, Performing Settling Defendants shall implement the activities required under the Remedial Action Work Plan. The Performing

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

12. The Performing Settling Defendants shall continue to implement the Remedial Action and O & M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

13. Modification of the SOW or Related Work Plans.

a. If EPA determines that modification to the Work specified in the SOW and/or in work plans developed pursuant to the SOW, including the Hydraulic Containment Remedial Design and any other deliverables approved pursuant to the RD AOC, is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the 2002 and 2006 RODs, EPA may require that such modification be incorporated in the SOW and/or such work plans, provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the RODs.

b. For the purposes of this Paragraph and Paragraphs 50 (Completion of the Remedial Action) and 51 (Completion of the Work) only, the "scope of the remedy selected in the RODs" shall mean the actions described in Section L of the 2002 and 2006 RODs including, but not limited to: groundwater containment with on-site treatment for the TI Zone; groundwater restoration beyond the TI Zone through monitored natural attenuation; Technical Impracticability Waiver; institutional controls; long-term monitoring of groundwater, surface water, sediments, indoor air/vapors (if required by EPA), and institutional controls; operation and maintenance; residential well monitoring with a contingency for public water; and vapor intrusion investigation and response.

c. If Performing Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XXI (Dispute Resolution), Paragraph 76 (Record Review). The SOW and/or related work plans, including the Hydraulic Containment Remedial Design, shall be modified in accordance with the final resolution of the dispute.

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

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

14. Performing Settling Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, the RD AOC, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiffs that compliance with the

work requirements set forth in the SOW, the RD AOC, and the work plans will achieve the Performance Standards.

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

(1) The Performing Settling Defendants shall include in the written notification the following information, where available: (a) the name and location of the facility to which the Hazardous Waste Material is to be shipped; (b) the type and quantity of the Hazardous Waste Material to be shipped; (c) the expected schedule for the shipment of the Hazardous Waste Material; and (d) the method of transportation. The Performing 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 Hazardous Waste Material 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 Performing Settling Defendants following the award of the contract for Remedial Action construction. The Performing Settling Defendants shall provide the information required by Paragraph 15(a) as soon as practicable after the award of the contract and before the Hazardous Waste Material is actually shipped.

b. Before shipping any Hazardous Waste Materials from the Site to an off-site location, Performing Settling Defendants shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of Section 121(d)(3) of CERCLA and 40 C.F.R. § 300.440. Performing Settling Defendants shall only send Hazardous Waste Materials from the Site to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.

## VII. REMEDY REVIEW

16. Periodic Review. Performing Settling Defendants shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations. The long-term monitoring and sampling programs described in the SOW have, among their objectives, providing data that will assist EPA in conducting reviews, at least every five years of whether the Remedial Action is protective of human health and the environment, as required by Section 121(c) of CERCLA and applicable regulations. In the event that EPA determines that additional data collection is necessary prior to its conduct of a periodic review pursuant to Section 121(c) of CERCLA, the Performing Settling Defendants shall conduct such additional data collection, as requested by EPA.

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

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

19. Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, the Settling Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 95 or 96 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling Defendants may invoke the procedures set forth in Section XXI (Dispute Resolution) to dispute (a) EPA's determination that the reopener conditions of Paragraph 95 or 96 of Section XXIII (Covenants by Plaintiffs) are satisfied, (b) EPA's determination that the Remedial Action is not protective of human health and the environment, or (c) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 76 (Record Review). However, if EPA selects further response actions for the TI Zone solely due to advances in technology not considered at the time the TI Waiver was granted, Settling Defendants shall not be obligated to pay for, to perform, or to reimburse EPA or the State for any costs related to such further response actions so long as the Remedial Action is protective of human health and the environment at the time such further response actions are selected. Any dispute arising from this provision shall be subject to the dispute resolution provisions of Section XXI.

20. Submissions of Plans. If Settling Defendants are required to perform the further response actions pursuant to Paragraph 19, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work By Performing Settling Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

#### VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

21. Performing Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240R-02/009, December 2002), "EPA New England Quality Assurance Project Plan Program Guidance," April 2005, and subsequent amendments to such guidelines upon notification by EPA to Performing Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any sampling or monitoring project under this Consent Decree, Performing Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Sampling and Analysis Plan ("SAP"), which includes, among other things, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Performing Settling Defendants shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Performing Settling Defendants in implementing this Consent Decree. In



addition, Performing Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Performing Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods or other methods approved by EPA for the Work. Accepted EPA methods include but are not limited to, those methods which are documented in the "Contract Lab Program Statement of Work for Organic Analysis" (Multi-Media, Multi-Concentration Organic Analysis, SOMO1.1, which can be found at <http://www.epa.gov/superfund/programs/clp/som1.htm>) and the "Contract Lab Program Statement of Work for Inorganic Analysis," (Multi-Media, Multi-Concentration Inorganic Analysis, ILM05.3, which can be found at <http://www.epa.gov/superfund/programs/clp/ilm5.htm>), and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, after opportunity for review and comment by the State, the Performing Settling Defendants may use other analytical methods which are as effective in achieving the applicable data quality objectives as the currently-approved EPA methods. Performing Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Performing Settling Defendants shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-2004, "Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use," and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. If the Performing Settling Defendants use a commercial laboratory for analysis for which NELAP certification is available, the Performing Settling Defendants shall provide documentation to EPA which demonstrates that each laboratory maintains NELAP certification for the specific methods/matrices and analysis to be performed. For each analytical method employed for which NELAP certification is not available, the Performing Settling Defendants shall provide supporting documentation demonstrating how the method has been verified for all matrices to be analyzed. EPA will review Performing Settling Defendants supporting documentation and will notify the Performing Settling Defendants as to whether such method is acceptable. Performing Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

22. Upon request, the Performing Settling Defendants shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives. EPA and the State shall provide copies of the results of the analysis of such samples to the Performing Settling Defendants after such results have undergone QA/QC analysis. Performing Settling Defendants shall notify EPA and the State not less than 14 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the State shall have the right to take any additional samples that EPA or the State deem necessary. Upon request, EPA and the State shall allow the Performing Settling Defendants to take split or duplicate samples of any samples they take as part of the Plaintiffs' oversight of the Performing Settling Defendants' implementation of the Work.

23. Performing Settling Defendants shall submit three copies to EPA and three copies

to the State of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Performing Settling Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA and/or the State specify a different number of copies. In addition, Performing Settling Defendants shall submit an electronic copy to EPA and the State.

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

#### IX. ACCESS AND INSTITUTIONAL CONTROLS

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

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

- (1) Performing and monitoring the Work;
- (2) Verifying any data or information submitted to the United States or the State;
- (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) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 105 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Performing Settling Defendants or their agents, consistent with Section XXVI (Access to Information);
- (9) Assessing Performing Settling Defendants' compliance with this Consent Decree; and
- (10) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree.

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect

the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such restrictions include, but are not limited to, restrictions on the use of groundwater beneath the former George West Jr. property and properties within the Institutional Control Zone; and

c. execute and record in the Registry of Deeds of Penobscot County, State of Maine, an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25(a), and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 25(b), or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the Performing Settling Defendants and their representatives, and/or (iv) other appropriate grantees. Such Settling Defendants shall, within 45 days of entry of this Consent Decree, submit to EPA for review and approval with respect to such property:

(1) A draft easement, in substantially the form attached hereto as Appendix E that is enforceable under the laws of the State of Maine, and

(2) a current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

Within 15 days of EPA's approval and acceptance of the easement and the title evidence, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Registry of Deeds of Penobscot County. Within 30 days of recording the easement, such Settling Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and an official copy of the original recorded easement showing the clerk's recording stamps. An official copy of the original recorded easement shall also be provided to the State. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111.

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

a. an agreement to provide access thereto for Performing Settling Defendants, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25(a);

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

United States, to refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such restrictions include, but are not limited to, restrictions on the use of groundwater beneath the former George West Jr. property and properties within the Institutional Control Zone; and

c. the execution and recordation in the Registry of Deeds of Penobscot County, State of Maine, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25(a), and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 25(b), or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the Performing Settling Defendants and their representatives, and/or (iv) other appropriate grantees. Within 45 days of entry of this Consent Decree, Performing Settling Defendants shall provide to EPA for review and approval with respect to such property:

(1) A draft easement, in substantially the form attached hereto as Appendix E, that is enforceable under the laws of the State, and

(2) a current title insurance commitment, or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Performing Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

Within 15 days of EPA's approval and acceptance of the easement and the title evidence, Performing Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, the easement shall be recorded with the Registry of Deeds of Penobscot County. Within 30 days of the recording of the easement, Performing Settling Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and an official copy of the original recorded easement showing the clerk's recording stamps. An official copy of the original recorded easement shall also be provided to the State. If an easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111.

d. The United States and the State hereby acknowledge and agree that:

(1) all of the provisions set forth in Paragraph 26(a), (b) and (c) have been fully satisfied for each of the properties listed in Appendix I [List of Property in the Institutional Control Zone with a Restrictive Covenant Recorded Prior to the Effective Date]. The recorded easements and restrictive covenants listed in Appendix I were recorded prior to the Effective Date but are not required to be revised, amended or restated except where Site or site-related conditions create a risk to human health or the environment and such risk can be mitigated by amending an existing easement and

restrictive covenant. In such event, the amended easement and restrictive covenant shall be in form and content substantially similar to the document appended hereto at Appendix E;

(2) with regard to property listed in Appendix J [List of Property in the Institutional Control Zone Not Connected to the Public Water System and Without a Recorded Restrictive Covenant], all of the provisions of this Paragraph 26 shall be deemed satisfied if, annually, on or about April 1, the Performing Settling Defendants send a letter to the then-current property owner(s) offering to connect their residential dwelling to the public water system at no cost in exchange for the execution and recording of an easement and environmental covenant in form and content substantially similar to the document appended hereto at Appendix E; and

(3) with regard to property listed in Appendix K [List of Property in the Institutional Control Zone Connected to the Public Water System but Without a Recorded Restrictive Covenant], all of the provisions of this Paragraph 26 shall be deemed satisfied if, annually, on or about April 1, the Performing Settling Defendants send a letter to the then-current property owner(s) requesting that the owner(s) sign an easement and environmental covenant in form and content substantially similar to the document appended hereto at Appendix E.

27. For purposes of Paragraphs 25 and 26, and for land located within the Institutional Control Zone, “best efforts” means good-faith negotiations with the property owner for an environmental covenant, substantially similar in form and content to the document appended hereto at Appendix E, to be recorded in the Penobscot County Registry of Deeds, in exchange for connecting the existing or future residence at the property to the Plymouth Water District public water supply. To the extent access and/or land/water use restrictions are needed to implement this Consent Decree for land outside of the Institutional Control Zone, “best efforts” means good-faith negotiations with the property owner and/or others, including the payment of reasonable sums of money, to obtain access (including agreements, easements and/or covenants for such access) and/or land/water use restrictions (including agreements, easements and/or covenants for such use restrictions). For purposes of this Paragraph, a reasonable sum of money is an amount of consideration which, taking into account the possible transaction costs (including but not limited to appraisal costs, attorneys fees, court costs and consultant/expert fees) that would likely be incurred in obtaining the rights in question by judicial or other means, is not out of proportion with the fair market value of the rights to be obtained. If (a) any access or land/water use restriction agreements required by Paragraphs 26(a) or 26(b) are not obtained within 45 days of the Effective Date, or (b) any access easements or restrictive easements required by Paragraph 26(c) are not submitted to EPA in draft form within 45 days of the Effective Date, or (c) Performing Settling Defendants are unable to obtain an agreement pursuant to Paragraph 25(c)(2) or 26(c)(2) from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the easement being created pursuant to this consent decree within 45 days of the Effective Date, Performing Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Performing Settling Defendants have taken to attempt to comply with Paragraph 25 or 26. The United States may, as it deems appropriate, assist Performing Settling Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land, or in obtaining the release or subordination of a

prior lien or encumbrance. Performing Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVII (Payments), for all costs incurred, direct or indirect, by the United States in obtaining such access, land/water use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

28. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the 2002 and 2006 RODs, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Performing Settling Defendants shall cooperate with EPA's and the State's efforts to secure such governmental controls.

29. Consistent with Paragraph 26(d), the United States and the State hereby acknowledge and agree that the requirements for access and institutional controls at the Site (both within and outside of the Institutional Control Zone) were satisfied to a significant extent as of December 15, 2005, as set forth in the Report on the Implementation of Institutional Controls for the Hows Corner Superfund Site, Plymouth, Maine, dated April 7, 2006 (Appendix A to the TI Evaluation Report, dated April 7, 2006). All access and institutional controls shall be addressed on an on-going basis in accordance with the Institutional Controls Plan required in the SOW.

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

#### X. REPORTING REQUIREMENTS

31. In addition to any other requirement of this Consent Decree, Performing Settling Defendants shall submit two copies to EPA and two copies to the State of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Performing Settling Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next two months, and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Performing Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next two months. Performing Settling Defendants shall submit these progress reports to EPA and the State by the tenth working day of every month following the lodging of this Consent Decree (unless the Parties agree to a different frequency for these reports) until EPA notifies the Performing Settling Defendants pursuant to Paragraph 51(b) (Completion of the Work). If requested by EPA or the State, Performing

Settling Defendants shall also provide briefings for EPA and the State to discuss the progress of the Work.

32. The Performing 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, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

33. Upon the occurrence of any event during performance of the Work that Performing Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Performing Settling Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 1, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

34. Within 20 days of the onset of such an event, Performing Settling Defendants shall furnish to Plaintiffs a written report, signed by the Performing 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, Performing Settling Defendants shall submit a report setting forth all actions taken in response thereto.

35. Performing Settling Defendants shall submit two copies (or other such number of copies, if specified by EPA) of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Performing Settling Defendants shall simultaneously submit three copies of all such plans, reports and data to the State. Performing Settling Defendants shall also submit to EPA and the State in electronic form all portions of any report or other deliverable Performing Settling Defendants are required to submit pursuant to the provisions of this Consent Decree.

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

#### XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

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

38. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 37(a), (b), or (c), Performing 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 XXI (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 37(c) and the submission has a material defect, EPA retains the right to seek stipulated penalties, as provided in Section XXII (Stipulated Penalties).

39. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 37(d), Performing Settling Defendants shall, within 21 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXII (Stipulated Penalties), shall accrue during the 21-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 40 and 41.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 37(d), Performing Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Performing Settling Defendants of any liability for stipulated penalties under Section XXII (Stipulated Penalties).

40. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Performing Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Performing Settling Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XXI (Dispute Resolution).

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

42. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. All documents approved or conditionally approved by EPA under the RD AOC are hereby incorporated by reference and shall be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree or the RD AOC, the approved or modified portion



shall be enforceable under this Consent Decree.

## XII. PROJECT COORDINATORS

43. Within 20 days of lodging this Consent Decree, Performing Settling Defendants, the State and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Performing Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Performing Settling Defendants' Project Coordinator shall not be an attorney for any of the Performing 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.

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

45. EPA's Project Coordinator and the Performing Settling Defendants' Project Coordinator will meet periodically as required in the SOW or such other frequency as the Parties agree to.

## XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

46. Within 30 days of the Effective Date the Performing Settling Defendants shall demonstrate financial ability to complete the Work by submitting to EPA a copy of the most recent Annual Report for each such listed Performing Settling Defendant. Each year thereafter, until Completion of the Work pursuant to Paragraph 51, Performing Settling Defendants shall submit their most recent Annual Report to EPA within 30 days of publication of such report. In the event that EPA determines at any time that the financial assurance provided by such Annual Reports do not demonstrate Performing Settling Defendants' ability to complete the Work, then the Performing Settling Defendants shall establish and maintain financial security in the amount needed to complete the Work in one or more of the following forms, which must be satisfactory in form and substance to EPA:

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;

- c. A trust fund;
- d. A demonstration by Performing Settling Defendants that one or more of the Performing Settling Defendants satisfy the requirements of 40 C.F.R. § 264.143(f); or
- e. A written guarantee to fund or 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 Performing Settling Defendants.

47. If at any time during the effective period of this Consent Decree, the Performing Settling Defendants provide a Performance Guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 46(d) or Paragraph 46(e), such Performing Settling Defendants shall resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the Effective Date. 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 Section are inadequate, Performing 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 46. Performing Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

48. The commencement of any Work Takeover pursuant to Paragraph 105 shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to Paragraphs 46(a) through 46(e), and at such time EPA shall have immediate access to resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. If for any reason EPA is unable to promptly secure the resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or in the event that the Performance Guarantee involves a submission of annual reports pursuant to Paragraph 46 or a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 46(d) or 46(e), Performing Settling Defendants shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA.

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

a. Reduction of Amount of Performance Guarantee. If at any time during the effective period of this Consent Decree, Performing Settling Defendants provide financial assurance for completion of the Work by any of the means listed in Paragraph 46(a) through (e) and the Performing Settling Defendants believe that the estimated cost to complete the Work has diminished below the amount set forth in the operative financial assurance, Performing Settling Defendants may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the Performance Guarantee provided pursuant to this Section so that the amount of the Performance Guarantee is equal to the estimated cost of the remaining Work to be performed. Performing Settling Defendants shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost

was calculated. In seeking approval for a revised or alternative form of Performance Guarantee, Performing Settling Defendants shall follow the procedures set forth in Paragraph 49(b)(2). If EPA decides to accept such a proposal, EPA shall notify the petitioning Performing Settling Defendants of such decision in writing. After receiving EPA's written acceptance, Performing Settling Defendants may reduce the amount of the Performance Guarantee in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, Performing Settling Defendants may reduce the amount of the Performance Guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute. No change to the form or terms of any Performance Guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraph 49(b).

b. Change of Form of Performance Guarantee.

(1) If, after entry of this Consent Decree, Performing Settling Defendants desire to change the form or terms of any Performance Guarantee(s) provided pursuant to this Section, Performing Settling Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form of the Performance Guarantee provided hereunder. The submission of such proposed revised or alternative form of Performance Guarantee shall be as provided in Paragraph 49(b)(2). Any decision made by EPA on a petition submitted under this Paragraph 49(b)(1) shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Performing Settling Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

(2) Performing Settling Defendants shall submit a written proposal for a revised or alternative form of Performance Guarantee to EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of Performance Guarantee, including all proposed instruments or other documents required in order to make the proposed Performance Guarantee legally binding. The proposed revised or alternative form of Performance Guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Performing Settling Defendants shall submit such proposed revised or alternative form of Performance Guarantee to the EPA Regional Financial Management Officer, with a copy to the Regional Financial Assurance Specialist in accordance with Section XXVIII (Notices and Submissions). EPA shall notify Performing Settling Defendants in writing of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this Paragraph. Within ten days after receiving a written decision approving the proposed revised or alternative Performance Guarantee, Performing Settling Defendants shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such Performance Guarantee(s) shall thereupon be fully effective. Performing Settling Defendants shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to the EPA Regional Financial Management Officer within thirty days of receiving a written decision approving the proposed revised or alternative Performance Guarantee in accordance with

Section XXVIII (Notices and Submissions), with copies to the Regional Financial Assurance Specialist, the United States, EPA and the State as specified in Section XXVIII (Notices and Submissions).

c. Release of Performance Guarantee. If Performing Settling Defendants receive written notice from EPA in accordance with Paragraph 51 (Completion of the Work) that the Work has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies Performing Settling Defendants in writing, Performing Settling Defendants may thereafter release, cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section. Performing Settling Defendants shall not release, cancel, or discontinue any Performance Guarantee provided pursuant to this Section except as provided in this Paragraph. In the event of a dispute, Performing Settling Defendants may release, cancel, or discontinue the Performance Guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

#### XIV. CERTIFICATION OF COMPLETION

##### 50. Completion of the Remedial Action.

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

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 responsible for gathering the information, the information contained in or accompanying this submission 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.

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved as required in the SOW, EPA will notify Performing Settling Defendants in writing of the activities that must be

undertaken by Performing Settling Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards, provided, however, that EPA may only require Performing Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the “scope of the remedy selected in the RODs,” as that term is defined in Paragraph 13(b). EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Performing Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Performing 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 XXI (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Performing 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 XXIII (Covenants by Plaintiffs). Certification of Completion of the Remedial Action shall not affect Performing Settling Defendants’ obligations under this Consent Decree.

51. Completion of the Work.

a. Within 90 days after Performing Settling Defendants conclude that all phases of the Work (including O & M but not including any obligations under Section VII (Remedy Review)), have been fully performed, Performing Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Performing Settling Defendants, EPA and the State. If, after the pre-certification inspection, the Performing Settling Defendants still believe that the Work has been fully performed, Performing Settling Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Performing Settling Defendant or the Performing Settling Defendants’ Project Coordinator:

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 responsible for gathering the information, the information contained in or accompanying this submission 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.

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Performing Settling Defendants in writing of the activities that must be undertaken by Performing Settling Defendants pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require Performing Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities

are consistent with the “scope of the remedy selected in the RODs,” as that term is defined in Paragraph 13(b). EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Performing Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Performing 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 XXI (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion of the Work by Performing Settling Defendants and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Performing Settling Defendants in writing.

#### XV. EMERGENCY RESPONSE

52. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Hazardous Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Performing Settling Defendants shall, subject to Paragraph 53, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA’s Project Coordinator, or, if the Project Coordinator is unavailable, EPA’s Alternate Project Coordinator. If neither of these persons is available, the Performing Settling Defendants shall notify the EPA Emergency Response Unit, Region 1. Performing Settling Defendants shall take such actions in consultation with EPA’s Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Performing Settling Defendants fail to take appropriate response action as required by this Section, and EPA or, as appropriate, the State takes such action instead, Performing Settling Defendants shall reimburse EPA and the State all costs of the response action not inconsistent with the NCP pursuant to Section XVII (Payments).

53. Subject to Section XXIII (Covenants by Plaintiffs), nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States, or the State (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Hazardous Waste Material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Hazardous Waste Material on, at, or from the Site.

#### XVI. PERFORMANCE OF NATURAL RESOURCES RESTORATION WORK

54. Performance of Natural Resources Damages Compensation Plan and Settlement Agreement. After the Effective Date, the Performing Settling Defendants shall implement the terms of the Natural Resources Damages Compensation Plan and Settlement Agreement, a copy of which is attached hereto at Appendix H.

#### XVII. PAYMENTS

55. Payments by Cashout Parties.

a. Within 30 days of the Effective Date, each Cashout Settling Defendant shall pay to the Trust the amount specified for that Cashout Settling Defendant in Appendix F to this Consent Decree, which amount includes the Cashout Settling Defendant's share of the estimated future cost of the Work, including a premium, and including a credit for Mixed Funding, EPA Future Response Costs, State Past Response Costs, State Future Response Costs, State Future Oversight Costs and Natural Resource Damages. Payment of each Cashout Settling Defendant's full settlement amount shall be made by Electronic Funds Transfer in accordance with instructions provided by Performing Settling Defendants after the Effective Date.

b. Pursuant to Paragraph 56, a portion of the funds contributed to the Trust by Cashout Settling Defendants pursuant to Paragraph 55(a) shall be used by Performing Settling Defendants to make their payments for the State's Past Response Costs, State Future Oversight Costs, and for Assessment of Natural Resource Damages and to fund the Work, EPA Future Response Costs, State Future Response Costs, and State Natural Resources Restoration Work.

56. Payments by Performing Settling Defendants.

a. Payment for State Past Response Costs. Within 60 days of the Effective Date, Performing Settling Defendants shall pay \$10,953 to the State in the form of official bank check(s) made payable to "Maine Uncontrolled Sites Fund" and shall reference the Hows Corner Superfund Site, Plymouth, in reimbursement of State Past Response Costs. The Performing Settling Defendants shall send the official bank check(s) to: Director, Division of Remediation, Maine DEP, Bureau of Remediation and Waste Management, 17 State House Station, Augusta, Maine 04333.

b. Payment for EPA Future Response Costs.

(1) Performing Settling Defendants shall pay to EPA all EPA Future Response Costs not inconsistent with the National Contingency Plan. On a periodic basis the United States will send Performing Settling Defendants a bill requiring payment that consists of a Region 1 cost summary, which is a line-item summary of costs in dollars by category of costs (including but not limited to payroll, travel, indirect costs, and contracts) incurred by EPA, DOJ and their contractors. Performing Settling Defendants shall make all payments within 60 days of Performing Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 57. Performing Settling Defendants shall make all payments required by this Paragraph by official bank check(s) made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Number #01H2 and DOJ Case Number 90-113-1733/7. Performing Settling Defendants shall send the check(s) to:

For Delivery by First Class Mail: U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

For Delivery by Overnight Mail: EPA Superfund - Region 1  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

(2) At the time of payment, Performing Settling Defendants shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVIII (Notices and Submissions) and to EPA's Cincinnati Financial Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268.

(3) The total amount paid by the Performing Settling Defendants pursuant to Paragraph 56(b) shall be deposited in the West Site/Hows Corner Special Account of the EPA Hazardous Substance Superfund.

c. Payment for State Future Response Costs. Performing Settling Defendants shall reimburse the State for all State Future Response Costs not inconsistent with the National Contingency Plan. The State will send Performing Settling Defendants a bill requiring payment that includes a cost summary, which is a line-item summary of costs in dollars by category of costs (including, but not limited to, payroll, travel, indirect costs and contracts), on a periodic basis. Performing Settling Defendants shall make all payments within 60 days of Performing Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 57. Performing Settling Defendants shall make payment by sending official bank check(s) made payable to "Maine Uncontrolled Sites Fund" and referencing the Hows Corner Superfund Site, Plymouth, to: Director, Division of Remediation, Maine DEP, Bureau of Remediation and Waste Management, 17 State House Station, Augusta, Maine 04333.

d. Payment for State Future Oversight Costs. Within 60 days of the Effective Date, Performing Settling Defendants shall make a one-time payment of \$900,000 to the State in the form of official bank check(s) made payable to "Maine Uncontrolled Sites Fund" and shall reference the Hows Corner Superfund Site, Plymouth, in full satisfaction of all State Future Oversight Costs. The Performing Settling Defendants shall send the payment to: Director, Division of Remediation, Maine DEP, Bureau of Remediation and Waste Management, 17 State House Station, Augusta, Maine 04333.

e. Payment for Federal Natural Resource Damages. Within 60 days of the Effective Date, Performing Settling Defendants shall pay \$6,500 to DOI for Natural Resource Damages. Payment to DOI shall be made in accordance with instructions provided by DOI after the Effective Date. Notice that this payment has been made shall be sent to: Department of the Interior, Natural Resource Damage Assessment and Restoration Fund, Attn: Restoration Fund Manager, 1849 C Street, N.W. Washington, DC 20240.

f. Payment for Assessment of State Natural Resource Damages. Within 60 days of the Effective Date, Performing Settling Defendants shall pay \$59,427 to the State for the costs of assessing Natural Resource Damages. Payment to the State shall be made in the form of an official bank check made payable to "Maine Uncontrolled Sites Fund" and shall reference the Hows Corner Superfund Site, Plymouth. Performing Settling Defendants shall send the official



bank check to: Director, Division of Remediation, Maine DEP, Bureau of Remediation and Waste Management, 17 State House Station, August, Maine 04333.

g. Payment for Insolvent, Unlocated and Defunct Responsible Parties. The Settling Defendants agree to include in their written certificate of costs to be submitted to the Finance Authority of Maine (FAME), pursuant to 10 M.R.S.A. section 1020-A(4)(A), documentation for State past response costs totaling \$546,537.93, which, according to the State, is attributable to insolvent, unlocated and defunct responsible parties that are eligible for funding of response costs pursuant to 10 M.R.S.A. section 1020-A(5)(A). The State shall provide the required documentation to Settling Defendants. The Settling Defendants agree that they will not contest FAME's placement on the registry for FAME funding eligibility the list of insolvent, unlocated and defunct responsible parties that the State has determined generated a total of 94,225.50 gallons of waste disposed of at the Site, and has further determined that these parties are liable for a total of \$546,537.93 in State past response costs. The Settling Defendants and the State further agree that they will jointly request that this payment be made directly to the State on behalf of the insolvent, unlocated and defunct responsible parties, provided that payment of the \$546,537.93 for State past response costs, or any partial payment thereof, shall not be requested or accepted by the State until after all other FAME payments for eligible response costs are made to responsible parties for the waste motor oil disposal sites listed in 10 M.R.S.A. section 963-A, subsection 51-E, A-D. While it is contemplated that FAME will pay this share of past costs directly to DEP on behalf of the insolvent, unlocated and defunct responsible parties, if FAME should pay the Settling Defendants directly, then the Settling Defendants will turn over this payment to DEP within 60 days of receipt. If FAME does not fully fund the State past response costs totaling \$546,537.93, which is attributable to insolvent, unlocated and defunct responsible parties, the Settling Defendants have no obligation to pay this unfunded liability for State past response costs. Any payments made to the State under this section shall be in the form of official bank check(s) made payable to "Maine Uncontrolled Sites Fund" and shall reference the Hows Corner Superfund Site, Plymouth, in reimbursement of State Response Costs. The official bank check(s) shall be sent to: Director, Division of Remediation, Maine DEP, Bureau of Remediation and Waste Management, 17 State House Station, Augusta, Maine 04333.

57. Performing Settling Defendants may contest payment of any EPA Future Response Costs or State Future Response Costs under Paragraph 56 if they determine that the United States or the State 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 60 days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or the State (if the State's accounting is being disputed) pursuant to Section XXVIII (Notices and Submissions). Any such objection shall specifically identify the contested EPA Future Response Costs or State Future Response Costs and the basis for objection. In the event of an objection, the Performing Settling Defendants shall within the 60 day period pay all uncontested EPA Future Response Costs or State Future Response Costs to the United States or the State in the manner described in Paragraph 56. Simultaneously, the Performing Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Maine and remit to that escrow account funds equivalent to the amount of the contested EPA Future Response Costs or State Future Response Costs. The Performing Settling Defendants shall send to the United States, as provided in Section XXVIII (Notices and Submissions), and the State a copy of the transmittal letter and

check paying the uncontested EPA Future Response Costs or State Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Performing Settling Defendants shall initiate the Dispute Resolution procedures in Section XXI (Dispute Resolution). If the United States or the State prevails in the dispute, within five days of the resolution of the dispute, the Performing Settling Defendants shall pay the sums due (with accrued interest) to the United States or the State, if State costs are disputed, in the manner described in Paragraph 56. If the Performing Settling Defendants prevail concerning any aspect of the contested costs, the Performing Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States or the State, if State costs are disputed in the manner described in Paragraph 56; Performing Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XXI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Performing Settling Defendants' obligation to reimburse the United States and the State for their EPA Future Response Costs or State Future Response Costs.

58. In the event that the payments required by Paragraph 55 are not made within 30 days of the Effective Date, or the payments required by Paragraphs 56(a), 56(d), 56(e), or 56(f) are not made within 60 days of the Effective Date, or the payments required by Paragraph 56(b) or 56(c) are not made within 60 days of the Performing Settling Defendants' receipt of the bill, the appropriate Settling Defendant(s) shall pay Interest on the unpaid balance. The Interest to be paid on each payment shall begin to accrue on the due date of the payment. The Interest shall accrue through the date of the appropriate Settling Defendant(s)' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraphs 80 and 81. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 56.

59. Payments by Settling Federal Agencies.

a. Payments to Trust. As soon as reasonably practicable after the Effective Date, AAFES and the United States on behalf of Settling Federal Agencies other than AAFES, respectively, will pay \$3,909 and \$59,752 to the Trust for the SFA's share of: (1) costs incurred for State Natural Resources Restoration Work; (2) costs incurred to develop the plan for the State Natural Resources Restoration Work; (3) costs incurred after October 31, 2003 for institutional controls that are not addressed by the RD AOC; and (4) costs incurred from April 1, 2007 through September 30, 2008 regarding the RI/FS AOC. These contributions may be used by Settling Defendants to fund the State Natural Resources Restoration Work.

b. Payments for Net Qualifying Expenditures.

(1) Upon receipt of a payment demand, AAFES and the United States on behalf of Settling Federal Agencies other than AAFES, respectively, shall pay to Performing Settling Defendants 2.71% and 41.44% of all Net Qualifying Expenditures, after making an adjustment for the credit provided in Paragraph 59(b)(2).

(2) Credit to SFAs' Payments for Net Qualifying Expenditures. The RD AOC resolved, among other things, Settling Defendants' claims against Settling Federal Agencies for Covered Institutional Controls, including some institutional controls that the Settling Defendants had contracted to provide as of October 2003, but which have not yet been implemented or paid for as of the Effective Date ("Future CICs"). The Parties have agreed, for the sake of simplifying the accounting of the future cost of the Work, that: (i) the costs of performing the Future CICs and the Work may be commingled and the funds in the Trust may be used to fund, without distinction, the performance of Future CICs and the Work; and (ii) the cost of Future CICs may be included in the definition of Qualifying Expenditures under Paragraph 59(b)(3). The inclusion of Future CICs in the definition of Qualifying Expenditures under Paragraph 59(b)(3) will cause an increase in the amount that the Settling Federal Agencies may be obligated to pay under Paragraph 59(b)(1). To eliminate the possibility that the SFAs may be obligated to pay twice for Future CICs (once under the RD AOC and again under Paragraph 59(b)(1)), the Settling Federal Agencies shall be entitled to a credit, against their payments under Paragraph 59(b)(1), regarding the Future CICs. The credit for AAFES shall be equal to 0.52450% of the actual cost of the Future CICs and the credit for the Settling Federal Agencies other than AAFES shall be equal to 8.24402% of the actual cost of the Future CICs.

(3) Definitions. The following definitions shall apply for purposes of this Paragraph 59: "Covered Institutional Controls" shall mean those activities that the respondents to the RD AOC undertook or committed to undertake on or before October 31, 2003, to establish land and groundwater use restrictions at the Site, as described in the Feasibility Study Report for the Site completed in 2002, and at properties within the Institutional Control Zone, pursuant to restrictive covenant agreements listed in Appendix D to the RD AOC, including the negotiation and preparation of restrictive covenants and implementation of community relations activities, and the providing of residential public drinking water to such properties as necessary to obtain agreements regarding land and groundwater use restrictions. "Covered Institutional Controls" do not include the provision of residential public drinking water connections to properties not restricted by the agreements, the enforcement of the restrictive covenants, or the establishment of any fund to pay for enforcement of the restrictive covenants. "Net Qualifying Expenditures" shall mean the actual amount of Qualifying Expenditures, minus: (a) all funds received by Performing Settling Defendants from the Trust on account of the Cashout Settling Defendants (including any interest or other income earned on such funds (net of taxes and trustee fees)); (b) any amounts received by Performing Settling Defendants from EPA pursuant to Section XVIII (Mixed Funding); and (c) any amounts received by Performing Settling Defendants from other persons, if any, who may settle with or otherwise make payments to Performing Settling Defendants for the Work, EPA Future Response Costs, State Future Response Costs or State Future Oversight Costs on account of claims against them for potential responsibility for the Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). "Qualifying Expenditures" shall mean the actual amounts paid by Performing Settling Defendants after the Effective Date for the Work, including attorney fees related to the implementation of the terms of the Consent Decree but not for attorney fees regarding internal issues among the Performing Settling Defendants or litigation with non-settlers, EPA Future Response

Costs and State Future Response Costs, provided that such costs are consistent with the NCP and this Consent Decree and do not include stipulated penalties.

(4) Performing Settling Defendants shall send Settling Federal Agencies a claim for payment on either an annual or semi-annual basis, at the option of Performing Settling Defendants. Semi-annual claims for payment shall be sent between April 1 and April 30 and between October 1 and October 31 of each year, and shall cover all Net Qualifying Expenditures incurred during the six months immediately preceding the month in which the demand is to be made, *i.e.*, October 1 of the previous year through March 31 of the current year, and April 1 through September 30 of the current year, respectively. Annual claims for payment shall be sent between October 1 and October 31 of each year, and shall cover all Net Qualifying Expenditures incurred during the year immediately preceding the month in which the demand is to be made, *i.e.*, October 1 of the previous year through September 30 of the current year. The right to reimbursement of an expenditure is waived if Performing Settling Defendants do not include the expenditure in a claim for payment within 13 months after the expenditure is incurred. Each claim for payment shall include (a) an invoice for payment of Net Qualifying Expenditures for the covered period; (b) sufficient documentation to allow verification of the accuracy of the costs and expenses claimed, (c) confirmation from the Performing Settling Defendants that such costs and expenses have actually been disbursed, (d) a certification by Performing Settling Defendants' Project Coordinator or other representative of Performing Settling Defendants that such costs and expenses: (i) are Net Qualifying Expenditures, (ii) were properly incurred in connection with the Site, (iii) were performed in compliance with the terms of this Consent Decree, and (iv) are consistent with the NCP, and (e) a statement that payment of the requested amount will be full and final settlement of that claim for payment.

(5) AAFES and the United States on behalf of Settling Federal Agencies other than AAFES shall make all payments to the Performing Settling Defendants under this Paragraph 59(b) as soon as reasonably practicable, unless Settling Federal Agencies provide Performing Settling Defendants a notice of dispute. In the event that there is a dispute concerning a demand for payment by Performing Settling Defendants, Settling Federal Agencies shall provide a notice of dispute and the amount and/or items disputed to Performing Settling Defendants within 90 days of the receipt of the demand for payment. If any portion of the amount demanded is not disputed, AAFES and the United States on behalf of Settling Federal Agencies other than AAFES shall pay that portion to Performing Settling Defendants in accordance with the provisions of Paragraph 59(b)(5). The notice of dispute shall set forth the nature and basis of the dispute. Performing Settling Defendants and Settling Federal Agencies shall endeavor in good faith to resolve the dispute in an informal manner within 30 days of the issuance of the notice of dispute. Unless Performing Settling Defendants and Settling Federal Agencies agree otherwise, if Performing Settling Defendants and Settling Federal Agencies are unable to resolve the dispute within 30 days, the period for informal dispute resolution shall end. AAFES and the United States on behalf of Settling Federal Agencies other than AAFES shall pay such outstanding portion of the costs demanded as AAFES and Settling Federal Agencies other than AAFES then agree are due and payable as soon as reasonably practicable after the informal dispute resolution period has ended.

Performing Settling Defendants and Settling Federal Agencies acknowledge that notwithstanding any other provision of this Consent Decree, in the event Settling Federal Agencies refuse to reimburse Performing Settling Defendants for costs Performing Settling Defendants in good faith believe are Net Qualifying Expenditures, the Performing Settling Defendants may, after the expiration of the informal dispute resolution period, seek relief from a court of competent jurisdiction. Disputes under this Paragraph 59 shall not be resolved using the procedures in Section XXI (Dispute Resolution).

c. Payments made under this Paragraph 59 to the Trust or Performing Settling Defendants, as appropriate, by AAFES or by the United States on behalf of Settling Federal Agencies other than AAFES shall be made by U.S. Treasury check (or, at the option of AAFES or the United States, by EFT in accordance with instructions provided by the Performing Settling Defendants) made payable as directed by the Performing Settling Defendants and shall be sent to Performing Settling Defendants pursuant to Section XXVIII (Notices and Submissions).

d. If either AAFES or the United States on behalf of Settling Federal Agencies other than AAFES do not make the payment required by Paragraph 59(a) (Settling Federal Agencies' Payments to Trust) within 120 days of the Effective Date, AAFES or the United States on behalf of Settling Federal Agencies other than AAFES, as applicable, shall pay Interest on the amount due and payable. If either AAFES or the United States on behalf of Settling Federal Agencies other than AAFES do not make payment required under 59(b) (Settling Federal Agencies' Payments for Net Qualifying Expenditures) within 120 days of a demand for payment, AAFES or the United States on behalf of Settling Federal Agencies other than AAFES, as applicable, shall pay Interest on any amounts due and payable. Interest under this Section shall accrue beginning on the 121st day following the Effective Date or receipt of the demand, whichever is applicable, and shall accrue through the date of payment.

e. The Parties recognize and acknowledge that the payment obligations of Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

#### XVIII. MIXED FUNDING

60. Pursuant to Section 122(b)(1) of CERCLA, 42 U.S.C. § 9622(b)(1), this Section, and Appendix G of this Consent Decree, EPA will reimburse the Performing Settling Defendants for certain costs that they have actually incurred and paid in performing the Work. In accordance with Appendix G of this Consent Decree, the Performing Settling Defendants may submit a claim for reimbursement to the Hazardous Substance Superfund (the "Superfund") for the actual costs incurred and paid by the Performing Settling Defendants in performing the Work. In no event shall such claim include any of the Performing Settling Defendants' response costs that were incurred prior to the date the Preauthorization Decision Document is signed. Reimbursement from the Superfund of the amount claimed by the Performing Settling Defendants shall be subject to the applicable claims and audit procedures set forth at 40 C.F.R. Part 307 and as specified in Appendix G.

61. If EPA denies the claim in whole or in part, it will provide to Performing Settling Defendants a written explanation for such denial. The Performing Settling Defendants may within 30 days after receiving notice of EPA's decision, request an administrative hearing as provided in Section 112(b)(2) of CERCLA, 42 U.S.C. § 9612(b)(2).

62. Payment of any claim under this Section shall be subject to the Performing Settling Defendants' subrogation of their rights to the United States to recover from other parties any costs reimbursed to the Performing Settling Defendants under this Section.

63. The Performing Settling Defendants and their contractors shall assist in any cost recovery action which may be initiated by the United States by furnishing the personnel, documents, and materials needed to assist the United States in the collection of evidence to document work performed and costs expended by the Performing Settling Defendants or their contractors at the Site; providing all requested assistance in the interpretation of such evidence and costs; and providing supporting testimony. All of the Performing Settling Defendants' contracts which implement the Preauthorization Decision Document shall include a specific requirement that the contractors agree to provide this cost recovery assistance to the United States. Performing Settling Defendants and their contractors shall not, however, be obligated to furnish any testimony, affidavits, declarations, documents, or other materials that are protected from disclosure by the attorney-client privilege, work-product doctrine, or any other privilege or doctrine recognized by federal law.

64. The Performing Settling Defendants shall not make any claims against the Superfund for costs associated with the Work performed under this Consent Decree, except as provided by this Section.

65. Trust Account.

a. Costs reimbursed to the Performing Settling Defendants pursuant to the claims procedures set forth in the Preauthorization Decision Document (Appendix G) shall be deposited into the Trust.

b. Promptly after receipt of EPA's written Certification of Completion of the Work pursuant to Paragraph 51(b), Performing Settling Defendants shall submit a letter report to EPA regarding the present value of expected future remedy review costs for the Site ("Estimated Remedy Review Costs"). Any dispute between EPA and Performing Settling Defendants regarding the Estimated Remedy Review Costs shall be subject to dispute resolution under Section XXI. If, as of the date of EPA's written Certification of Completion of the Work, the funds in the Trust (not including any funds paid to the Trust by the Performing Settling Defendants), if any, exceed the Estimated Remedy Review Costs, Performing Settling Defendants shall pay such excess to EPA, provided, however, that such payment shall not exceed the total amount of monies reimbursed to Performing Settling Defendants pursuant to the Preauthorization Decision Document, after adjusting for inflation.

XIX. INDEMNIFICATION AND INSURANCE

66. Performing Settling Defendants' Indemnification of the United States and the State.

a. The United States and the State do not assume any liability by entering into this agreement or by virtue of any designation of Performing Settling Defendants as EPA's

authorized representatives under Section 104(e) of CERCLA. Performing Settling Defendants shall indemnify, save and hold harmless the United States (with the exception of the Federal Settling Agencies), the State, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Performing Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Performing Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Performing Settling Defendants agree to pay the United States (with the exception of Settling Federal Agencies) and the State all costs they incur including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of Performing Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Performing Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Performing Settling Defendants nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State shall give Performing Settling Defendants notice of any claim for which the United States or the State plans to seek indemnification pursuant to Paragraph 66(a) and shall consult with Performing Settling Defendants prior to settling such claim.

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

68. No later than 15 days before commencing any on-site Work, Performing Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 50 comprehensive general liability insurance with limits of five million dollars, combined single limit, and automobile liability insurance with limits of five million dollars, combined single limit, naming the United States and the State as additional insured. In addition, for the duration of this Consent Decree, Performing Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Performing Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Performing Settling Defendants shall provide to EPA and the State certificates of such insurance

and a copy of each insurance policy. Performing Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Performing Settling Defendants demonstrate by evidence satisfactory to EPA and the State that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Performing Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

#### XX. FORCE MAJEURE

69. “Force majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Performing Settling Defendants, of any entity controlled by Performing Settling Defendants, or of Performing Settling Defendants’ contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Performing Settling Defendants’ best efforts to fulfill the obligation. The requirement that the Performing 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 or a failure to attain the Performance Standards.

70. 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 Performing Settling Defendants shall notify orally EPA’s Project Coordinator or, in his or her absence, EPA’s Alternate Project Coordinator or, in the event both of EPA’s designated representatives are unavailable, the Director of the Office of Site Remediation & Restoration, EPA Region 1, within 24 hours of when the Performing Settling Defendants first knew that the event might cause a delay. The Performing Settling Defendants shall also notify orally the State’s Project Coordinator, or in his or her absence Director, Maine DEP, Division of Remediation, within 24 hours of when the Performing Settling Defendants first knew that the event might cause a delay. Within five days thereafter, the Performing Settling Defendants shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Performing 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 Performing Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Performing 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 the Performing Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Performing Settling Defendants shall be deemed to know of any circumstance of which Performing Settling Defendants, any entity controlled by Performing Settling Defendants, or Performing Settling Defendants’ contractors knew or should have known.



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

72. If the Performing Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, the Performing 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, 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 the Performing Settling Defendants complied with the requirements of Paragraphs 69 and 70. If the Performing Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by the Performing Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

#### XXI. DISPUTE RESOLUTION

73. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between EPA and the Performing Settling Defendants or between the State and the Performing Settling Defendants arising under or with respect to this Consent Decree. The procedures for resolution of disputes which involve EPA are governed by Paragraphs 74 through 78. The State may participate in such dispute resolution proceedings to the extent specified in Paragraphs 74 through 78. Disputes exclusively between the State and the Performing Settling Defendants are governed by Paragraph 79. However, the procedures set forth in this Section shall not apply to actions by the United States or the State to enforce obligations of the Performing Settling Defendants that have not been disputed in accordance with this Section.

74. 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 30 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. If agreement cannot be reached on any issue within this 30 day period, Performing Settling Defendants or EPA, in consultation with the State, may, by providing notice in writing, request employment of a neutral mediator to be selected in accordance with EPA Guidance on use of Alternative Dispute Resolution. The Parties shall in the first instance consider employing an EPA in-house

mediator. Such mediation shall be non-binding and shall not last longer than 30 days from the selection of the mediator unless extended by written agreement of EPA, in consultation with the State, and the Performing Settling Defendants. If neither party requests mediation or the dispute is resolved at the end of the mediation period, EPA shall provide a written statement of its final position to the Performing Settling Defendants. If the Performing Settling Defendants and EPA, in consultation with the State, agree to change any EPA action or no agreement is reached and EPA issues its final position on the dispute, the Performing Settling Defendants shall begin to implement the activities required by the EPA decision no later than 15 days after such agreement is reached or after receipt of EPA's final position. Except as specifically provided herein, a dispute among the parties under this Section shall not be cause for the delay of any work. EPA retains the right to perform additional studies and to conduct all or a portion of the Work pursuant to its authority under CERCLA and to recover the costs thereof from Performing Settling Defendants.

75. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations or mediation pursuant to the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within ten days after the conclusion of the informal negotiation period, the Performing Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States and the State 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 Performing Settling Defendants. The Statement of Position shall specify the Performing Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 76 or 77.

b. Within 21 days after receipt of the Performing Settling Defendants' Statement of Position, EPA, after reasonable opportunity for review and comment by the State, will serve on the Performing 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. The State, after reasonable opportunity for review and comment by EPA, may also serve a Statement of Position on the Performing Settling Defendants within the 21-day time limit set forth above. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 76 or 77. Within 14 days after receipt of EPA's Statement of Position, the Performing Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Performing Settling Defendants as to whether dispute resolution should proceed under Paragraph 76 or 77, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Performing 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 76 and 77.

76. 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 the Settling Defendants regarding the validity of the RODs' provisions.

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

b. The Director of the Office of Site Remediation & Restoration, EPA Region 1, after reasonable opportunity for review and comment by the State, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 76(a). This decision shall be binding upon the Performing Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraphs 76(c) and (d).

c. Any administrative decision made by EPA pursuant to Paragraph 76(b) shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Performing Settling Defendants with the Court and served on all Parties within ten days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to the Performing Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, the Performing Settling Defendants shall have the burden of demonstrating that the decision of the Director of the Office of Site Remediation & Restoration is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 76(a).

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

a. Following receipt of the Performing Settling Defendants' Statement of Position submitted pursuant to Paragraph 75, the Director of the Office of Site Remediation & Restoration, EPA Region 1, after reasonable opportunity for review and comment by the State, will issue a final decision resolving the dispute. The decision of the Director of the Office of Site Remediation & Restoration shall be binding on the Performing Settling Defendants unless, within ten days of receipt of the decision, the Performing Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to the Performing Settling Defendants' motion.

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

78. The invocation of formal dispute resolution procedures under this Section shall

not extend, postpone or affect in any way any obligation of the Performing Settling Defendants under this Consent Decree, not directly in dispute, unless EPA, after reasonable opportunity for review and comment by the State, or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 88. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Performing Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXII (Stipulated Penalties).

79. Disputes Solely Between the State and the Performing Settling Defendants.

Disputes arising under the Consent Decree between the State and the Performing Settling Defendants that relate to State Future Response Costs owed to the State, assessment of stipulated penalties by the State, and the adequacy of access and institutional controls following any assignment of a grant of environmental restrictions from the United States to the State, shall be governed in the following manner. The procedures for resolving the disputes mentioned in this Paragraph shall be the same as provided for in Paragraphs 74 to 77, except that each reference to EPA shall read as a reference to MEDEP, each reference to the Director of the Office of Site Remediation & Restoration, EPA Region 1, shall be read as a reference to Director, Division of Remediation, Maine DEP, and each reference to the United States shall be read as a reference to the State.

XXII. STIPULATED PENALTIES

80. The appropriate Settling Defendant(s) shall be liable for stipulated penalties in the amounts set forth in Paragraphs 81 and 82 to the United States and the State for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XX (Force Majeure). The appropriate Settling Defendant(s) shall pay 90% of the stipulated penalties to the United States, and shall pay 10% of the stipulated penalties to the State in accordance with the requirements of Paragraph 86. “Compliance” by Performing Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree or the RD AOC in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA or the State, pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree. “Compliance” by each Cashout Settling Defendant shall include timely completion of its full obligations under Paragraph 55(a).

81. The following stipulated penalties shall accrue per violation per day for any noncompliance except those identified in Paragraph 82:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$500                                | 1st through 14th day           |
| \$2,000                              | 15th through 30th day          |
| \$3,000                              | 31st day and beyond            |

82. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports pursuant to Paragraph 31, Section X (Reporting Requirements):

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$500                                | 1st through 14th day           |
| \$2,000                              | 15th through 30th day          |
| \$3,000                              | 31st day and beyond            |

83. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 105 (Work Takeover), Performing Settling Defendants shall be liable for a stipulated penalty in the amount of \$250,000.

84. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Performing Settling Defendants of any deficiency; (b) with respect to a decision by the Director of the Office of Site Remediation & Restoration, EPA Region 1, under Paragraph 76(b) or 77(a) of Section XXI (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that the Performing Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XXI (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

85. Following EPA's determination, after a reasonable opportunity for review and comment by the State, that one or more Settling Defendant(s) have failed to comply with a requirement of this Consent Decree, EPA may give the appropriate Settling Defendant(s) written notification of the same and describe the noncompliance. EPA, or EPA and the State jointly may send the appropriate Settling Defendant(s) a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA or the State has notified the appropriate Settling Defendant(s) of a violation.

86. All penalties accruing under this Section shall be due and payable to the United States and/or the State within 30 days of the appropriate Settling Defendant(s)' receipt from EPA of a demand for payment of the penalties, or the State, unless the Performing Settling Defendants invoke the Dispute Resolution procedures under Section XXI (Dispute Resolution).

a. All payments to the United States under this Section shall be made by EFT to the EPA Regional Superfund Lockbox in accordance with current EFT procedures, and in accordance with instructions provided to Settling Defendants by EPA following lodging of the Consent Decree. All payments shall reference the EPA Site/Spill ID Number 01H2 and DOJ Case Number 90-11-3-1733/7. At the time of any payment, the appropriate Settling Defendant(s) shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVIII (Notices and Submissions), and to the EPA Cincinnati Finance Office by mail at 26 Martin Luther King

Drive, Cincinnati, Ohio 45268, and by email at [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov).

b. All payments to the State under this Section shall be made payable to “Maine Uncontrolled Sites Fund” and shall reference the Hows Corner Superfund Site, Plymouth. The payment shall be mailed to Director, Maine DEP, Division of Remediation, Bureau of Remediation and Waste Management, 17 State House Station, Augusta, Maine 04333. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States and the State as provided in Section XXVIII (Notices and Submissions).

87. The payment of penalties shall not alter in any way Performing Settling Defendants’ obligation to complete the performance of the Work required under this Consent Decree or the Cashout Settling Parties’ obligation to make payments under this Consent Decree.

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

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

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

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

89. State Assessment of Stipulated Penalties. Assessment of stipulated penalties by the State shall be governed in the following manner. Following the State’s determination that Performing Settling Defendants have failed to pay State Past Response Costs, State Future Oversight Costs or State Future Response Costs owed to the State as required by Section XVII (Payments), or have failed to timely submit deliverables to the State, or have failed to timely provide such written or oral notices to the State as are required by this Consent Decree, the State may, after reasonable opportunity for review and comment by EPA, give Performing Settling Defendants written notification of the same and describe the noncompliance. The provisions for liability, assessment and payment of the stipulated penalties referenced in this Paragraph shall be the same as provided in Paragraphs 80 to 88 of this Section, except that in Paragraph 85 excluding the last sentence of that Paragraph, and in Paragraph 88, each reference to EPA shall read as a reference to MEDEP, each reference to the United States shall be read as a reference to the State, each reference to the State shall be read as a reference to the United States, and each reference to the State’s reasonable opportunity to review and comment shall read as EPA’s reasonable opportunity for review and comment. For penalties assessed under this Paragraph, the Performing Settling Defendants shall pay 90% to the State, and shall pay 10% to the United

States in accordance with the requirements of Paragraph 86 of this Section.

90. If the appropriate Settling Defendant(s) fail to pay stipulated penalties when due, the United States or the State may institute proceedings to collect the penalties, as well as interest thereon. The appropriate Settling Defendant(s) shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 86.

91. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of the appropriate 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, provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

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

### XXIII. COVENANTS BY PLAINTIFFS

93. United States' Covenant for Settling Defendants. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 95, 96, 104 and 105, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA or Section 7003 of RCRA, 42 U.S.C. § 6973, regarding the Site, including Past Response Costs, EPA Future Response Costs, EPA Future Oversight Costs and Natural Resource Damages. Except with respect to future liability, these covenants shall take effect, for each Performing Settling Defendant, upon the receipt by DOI of the payment required by Paragraph 56(e) (Payment for Federal Natural Resource Damages). Except with respect to future liability, these covenants shall take effect, for each Cashout Settling Defendant, upon its payment pursuant to Paragraph 55 (Payments by Cashout Parties). With respect to future liability, these covenants shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 50(b). These covenants are conditioned upon the satisfactory performance by Performing Settling Defendants and each Cashout Settling Defendant of their obligations under this Consent Decree. These covenants extend only to the Settling Defendants and do not extend to any other person.

94. Covenant for Settling Federal Agency. In consideration of the payments that will be made by Settling Federal Agencies under the terms of the Consent Decree, and except as specifically provided in Paragraphs 95, 96, 104 and 105, the United States covenants not to take administrative action against Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA or Section 7003 of RCRA, 42 U.S.C. § 6973, regarding the Site, including Past Response Costs, EPA Future Response Costs, EPA Future Oversight Costs and Natural Resource Damages. Except with respect to future liability, this covenant shall take effect upon the receipt of the payments required by Paragraph 59(a) (Settling Federal Agencies' Payments to the Trust). With respect to future liability, this covenant shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 50(b). This covenant is conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent

Decree. This covenant extends only to Settling Federal Agencies and does not extend to any other person.

95. 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, and EPA reserves the right to issue an Administrative Order seeking to compel Settling Federal Agencies either to perform further response actions relating to the Site or to reimburse the United States for additional costs of response if: (a) 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 (b) EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

96. 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, and EPA reserves the right to issue an Administrative Order seeking to compel Settling Federal Agencies either to perform further response actions relating to the Site or to reimburse the United States for additional costs of response if: (a) 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 (b) EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

97. For purposes of Paragraph 95, the information and the conditions known to EPA shall include (a) only that information and those conditions known to EPA as of the date the 2006 ROD was signed and set forth in the Records of Decision for the Site and the administrative records supporting the Records of Decision; (b) any information contained in documents submitted to EPA pursuant to the requirements of the RD AOC or the RI/FS AOC prior to the date of lodging of this Consent Decree; and (c) any information contained in documents prepared by EPA prior to the date of lodging of the Consent Decree and related to any work performed by EPA regarding the Site. For purposes of Paragraph 96, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Records of Decision, the administrative records supporting the Records of Decision, the post-ROD administrative records, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

98. State's Covenant Not to Sue Settling Defendants and Settling Federal Agencies. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants and the payments that will be made by Settling Federal Agencies under the terms of the Consent Decree, and except as specifically provided in Paragraphs 99, 100, 104 and 105, the State covenants not to sue or to take administrative action against Settling Defendants and Settling Federal Agencies pursuant to Section 107(a) of CERCLA and 38 M.R.S.A. § 1367



regarding the Site, including State Past Response Costs, State Future Response Costs, State Future Oversight Costs, Natural Resource Damages and assessment of State Natural Resource Damages. These covenants shall take effect, for each Performing Settling Defendant, upon receipt of the payments required by Paragraphs 56(a) (Payment for State Past Response Costs), Paragraph 56(d) (Payment for State Future Oversight Costs) and 56(f) (Payment for Assessment of State Natural Resource Damages) and upon transfer of parcels as provided in the State NRD Compensation Plan. These covenants shall take effect, for Settling Federal Agencies, upon the payment required by Paragraph 59(a) (Settling Federal Agencies' Payments to Trust). The covenants for each Cashout Settling Defendant shall take effect upon its payment pursuant to Paragraph 55. These covenants are conditioned upon the satisfactory performance by the Performing Settling Defendants, each Cashout Settling Defendant, and Settling Federal Agencies of their obligations under this Consent Decree. These covenants extend only to the Settling Defendants and Settling Federal Agencies and do not extend to any other person.

99. State's Pre-Certification Reservations. Notwithstanding any other provisions of this Consent Decree, the State on behalf of MEDEP, reserves, and this Consent Decree is without prejudice to, any right jointly with, or separately from, the United States to institute proceedings in this action or in a new action under Section 107 of CERCLA, 42 U.S.C. § 9607, or under any applicable State law, including but not limited to, 38 M.R.S.A. § 1367, seeking to compel all or any of the Settling Defendants and Settling Federal Agencies either to perform other response actions at the Site, or to reimburse the State for additional response costs for response actions at the Site, to the extent that EPA has determined that such response actions will not significantly delay or be inconsistent with the Remedial Action, if (a) prior to Certification of Completion of the Remedial Action (i) conditions at the Site, previously unknown to the State, are discovered or become known to the State, or (ii) information previously unknown to the State is received by the State, in whole or in part, and (b) MEDEP determines, under any applicable State law, including, but not limited to 38 M.R.S.A. § 1367, based on these previously unknown conditions or this information together with any other relevant information, that the Remedial Action is not protective of health, safety, public welfare or the environment. The United States reserves all rights it may have under applicable law, to oppose any determinations made or any actions taken, ordered or proposed by the State pursuant to this Paragraph.

100. State's Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the State, on behalf of MEDEP, reserves, and this Consent Decree is without prejudice to, the right jointly with, or separately from, the United States to institute proceedings in this action or in a new action under Section 107 of CERCLA, 42 U.S.C. § 9607, or under any applicable State law, including but not limited to 38 M.R.S.A. § 1367, seeking to compel all or any of the Settling Defendants and Settling Federal Agencies either to perform other response actions at the Site, or to reimburse the State for additional response costs for response actions at the Site, to the extent that EPA has determined that such response actions will not significantly delay or be inconsistent with the Remedial Action, if (a) subsequent to Certification of Completion of Remedial Action (i) conditions at the Site, previously unknown to the State, are discovered or become known to the State after the Certification of Completion, or (ii) information previously unknown to the State is received by the State, in whole or in part, after the Certification of Completion, and (b) MEDEP determines, under any applicable State law, including, but not limited to 38 M.R.S.A. § 1367, based on these previously unknown

conditions or this information together with any other relevant information, that the Remedial Action is not protective of health, safety, public welfare or the environment. The United States reserves all rights it may have under applicable law, to oppose any determinations made or any actions taken, ordered or proposed by the State pursuant to this Paragraph.

101. For the purposes of Paragraph 99, the information and the conditions known to the State shall include: (a) only that information and those conditions known to the State as of the date the 2006 ROD was signed and set forth in the Records of Decision for the Site and the administrative records supporting the Records of Decision; (b) any information contained in documents submitted to the State pursuant to the requirements of the RD AOC or the RI/FS AOC prior to the date of lodging of this Consent Decree; and (c) any information contained in documents prepared by the State prior to the date of lodging of the Consent Decree and related to any work performed regarding the Site by the State. For purposes of Paragraph 100, the information and the conditions known to the State shall include only that information and those conditions known to the State as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decisions, the administrative records supporting the Record of Decisions, the post-ROD administrative records, or in any information received by the State pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

102. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, the right to institute civil or administrative proceedings, as applicable, against Settling Defendants and Settling Federal Agencies in this action or in a new action, seeking recovery of Natural Resource Damages, including costs of damage assessment, under Section 107(a)(4)(C) of CERCLA, if, after the Effective Date:

a. conditions at the Site, previously unknown to a NR Trustee are discovered and are found to result in releases of hazardous substances that contribute to injury to, destruction of, or loss of natural resources; or

b. information previously unknown to a NR Trustee is received, and the NR Trustee determines that the new information together with other relevant information indicate that releases of hazardous substances at the Site have resulted in injury to, destruction of, or loss of natural resources of a type that was unknown to the NR Trustee as of the date of lodging of the Consent Decree.

The United States reserves all rights it may have under applicable law, to oppose any determinations made or any actions taken, ordered or proposed by the State pursuant to this Paragraph.

103. For purposes of the preceding Paragraph, the information and conditions known to the NR Trustees shall include only that information and those conditions known to the NR Trustees as of the date the 2006 ROD was signed and set forth in the Records of Decision for the Site and the administrative records supporting the Records of Decision, and any information contained in documents submitted to the NR Trustees pursuant to, or in support of, the requirements of the RD AOC or the RI/FS AOC, or the settlement of Natural Resource Damages prior to the date of lodging of this Consent Decree.

104. General reservations of rights. The United States and the State reserve, and this

Consent Decree is without prejudice to, all rights against Settling Defendants, and EPA, the federal NR Trustees, and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Agencies, with respect to all matters not expressly included within Plaintiffs' covenants not to sue or to take administrative action. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve all rights against Settling Defendants, and EPA, the federal NR Trustees and the State reserve all rights against Settling Federal Agencies, with respect to:

- a. claims based on a failure by Settling Defendants or Settling Federal Agencies to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Hazardous Waste Material outside of the Site;
- c. liability based upon the Settling Defendants' ownership or operation of the Site, or upon the Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Hazardous Waste Material at or in connection with the Site, other than as provided in the 2002 ROD, the 2006 ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Settling Defendants;
- d. criminal liability;
- e. liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and
- f. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 13 (Modification of the SOW or Related Work Plans).

105. Work Takeover.

a. In the event EPA determines that Performing Settling Defendants have (i) ceased implementation of any portion of the Work, or (ii) are seriously or repeatedly deficient or late in their performance of the Work, or (iii) are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to the Performing Settling Defendants. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Performing Settling Defendants a period of 20 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 20-day notice period specified in the preceding subparagraph, Performing Settling Defendants have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portions of the Work as EPA deems necessary ("Work Takeover"). EPA shall notify Performing Settling Defendants in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph.

c. Performing Settling Defendants may invoke the procedures set forth in

Section XXI (Dispute Resolution), Paragraph 76, to dispute EPA's implementation of a Work Takeover under the previous subparagraph. However, notwithstanding Performing Settling Defendants' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under the previous subparagraph until the earlier of (i) the date that Performing Settling Defendants remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice or (ii) the date that a final decision is rendered in accordance with Section XXI (Dispute Resolution), Paragraph 76(b), requiring EPA to terminate such Work Takeover.

d. After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any performance guarantee(s) provided pursuant to Section XIII (Assurance of Ability to Complete Work), in accordance with the provisions of Paragraph 48. If and to the extent that EPA is unable to secure the resources guaranteed under any such performance guarantee(s) and the Performing Settling Defendants fail to remit a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed, all in accordance with the provisions of Paragraph 48, any unreimbursed costs incurred by EPA in performing Work under the Work Takeover shall be considered EPA Future Response Costs that Performing Settling Defendants shall pay pursuant to Section XVII (Payments).

106. Notwithstanding any other provisions of this Consent Decree, the United States and the State retain all authority and reserve all rights to take any and all response actions authorized by law. For purposes of this Paragraph only, the term "response actions" does not include actions to compel Performing Settling Defendants to conduct or pay for response actions at the Site. The United States' and the State's rights to compel Performing Settling Defendants to conduct or pay for response actions are governed by the remainder of this Section XXIII.

#### XXIV. COVENANTS BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCIES

107. Covenant Not to Sue by Settling Defendants. Subject to the reservations in Paragraph 110, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or the State with respect to the Site, including Natural Resource Damages, or this Consent Decree, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112 and 113 or any other provision of law, except as specifically provided in Paragraphs 60 to 64 and Appendix G of this Consent Decree;
- b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or
- c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Maine Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

108. Covenants by Settling Federal Agencies. Settling Federal Agencies hereby agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through

CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law with respect to the Site or this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

109. Except as provided in Paragraph 116 (Waiver, Res Judicata and Other Defenses), the covenants not to sue in this Section shall not apply if the United States or the State brings a cause of action or issues an order pursuant to any of the reservations in Section XXIII (Covenants By Plaintiffs) other than in Paragraphs 104(a) (claims for failure to meet a requirement of the Decree), 104(d) (criminal liability), and 104(e) (violations of federal/state law during or after implementation of the Remedial Action), but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

110. The Settling Defendants reserve, and this Consent Decree is without prejudice to:

a. claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA; and

b. contribution claims against Settling Federal Agencies in the event any claim is asserted by the United States or the State against the Settling Defendants pursuant to any of the reservations in Section XXIII (Covenants By Plaintiffs) other than in Paragraphs 104(a) (claims for failure to meet a requirement of the Decree), 104(d) (criminal liability), and 104(e) (violations of federal/state law during or after implementation of the Remedial Action), but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claim of the United States or the State against Settling Defendants.

111. Other than as specifically provided in Section XVIII and Appendix G, 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).

#### XXV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

112. 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. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

113. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and that the Performing Settling Defendants and Settling Federal Agencies are entitled, as of the Effective Date, and each Cashout Settling Defendant is entitled on the later of the Effective Date or the date on which it makes its full payment pursuant to Paragraph 55(a), to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) and 38 M.R.S.A. § 348(4), or as may be otherwise provided by law, for matters addressed in this Consent Decree. The “matters addressed” in this Consent Decree are (a) all response actions taken or to be taken and all response costs incurred or to be incurred by the United States, the State or any other person with respect to the Site and (b) Natural Resource Damages; provided, however, that if the United States exercises rights against Settling Defendants (or if EPA or the federal natural resource trustee or the State assert rights against Settling Federal Agencies) under the reservations in Section XXIII (Covenants by Plaintiffs), other than in Paragraphs 104(a) (claims for failure to meet a requirement of the Decree), 104(d) (criminal liability), or 104(e) (violations of federal/state law during or after implementation of the Remedial Action), or if the State exercises rights under the above-referenced reservations, the “matters addressed” in this Consent Decree will no longer include those response costs or response actions or natural resource damages that are within the scope of the exercised reservation.

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

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

116. In any subsequent administrative or judicial proceeding initiated by the United States or the State 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 or the State 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 XXIII (Covenants by Plaintiffs).

## XXVI. ACCESS TO INFORMATION

117. Performing Settling Defendants shall provide to EPA and the State, 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. For purposes of investigation, information gathering, or assisting EPA in overseeing the Work or implementing this Consent Decree, Performing Settling Defendants shall make one or more representatives, who have knowledge of relevant facts concerning the performance of the Work, available to EPA and the State at a reasonable time to discuss the Work.

### 118. Business Confidential and Privileged Documents.

a. Performing 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 and the State, or if EPA has notified Performing 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, Subpart B, the public may be given access to such documents or information without further notice to Performing Settling Defendants. Public access to documents or information submitted to the State is governed by the State's Freedom of Access Act ("FOAA"), 1 M.R.S.A. §§ 401-411.

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

119. 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.

## XXVII. RETENTION OF RECORDS

120. Until ten years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 51(b) (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession

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

121. The United States acknowledges that each Settling Federal Agency (a) is subject to all applicable Federal record retention laws, regulations, and policies; and (b) has certified that it has fully complied with any and all EPA and State requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

122. At the conclusion of this document retention period, Settling Defendants shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State, Settling Defendants shall deliver any such records or documents to EPA or the State. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

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

#### XXVIII. NOTICES AND SUBMISSIONS

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



Consent Decree with respect to the United States, EPA, Settling Federal Agencies, the State, and the Settling Defendants, respectively.

|   |  |
|---|--|
| As to the United States:  | Chief, Environmental Enforcement Section<br>Environment and Natural Resources Division<br>U.S. Department of Justice<br>P.O. Box 7611<br>Washington, D.C. 20044-7611<br>Re: DJ # 90-113-1733/7 |
| As to EPA:  | Terry Connelly<br>EPA Project Coordinator<br>U.S. Environmental Protection Agency<br>Region 1<br>One Congress Street, Suite 1100 (HBT)<br>Boston, MA 02114-2023                                |
| As to the Regional Financial Management Officer (only as to payments under the Consent Decree): | Regional Financial Management Officer<br>U.S. EPA Region 1<br>One Congress Street, Suite 1100 (MCO)<br>Boston, MA 02114-2023   |
| As to the Regional Financial Assurance Specialist (only as to Financial Assurance):             | John Shanahan<br>Information and Budget Management Section<br>EPA Region I<br>One Congress Street, Suite 1100 (HBS)<br>Boston, MA 02114-2023   |
| As to the State:  | Rebecca Hewett<br>State Project Coordinator<br>Maine DEP<br>17 State House Station<br>Augusta, ME 04333  |
| As to Performing Settling Defendants:   | Pierce Atwood LLP<br>One New Hampshire Avenue<br>Suite 350<br>Portsmouth, NH 03801<br>Attn: Mark Beliveau, Esq.  |
| As to Cashout Settling Defendants:  | Pierce Atwood LLP<br>One New Hampshire Avenue<br>Suite 350<br>Portsmouth, NH 03801<br>Attn: Mark Beliveau, Esq.  |

XXIX. EFFECTIVE DATE

125. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XXX. RETENTION OF JURISDICTION

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

XXXI. APPENDICES

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

“Appendix A” is the 2002 ROD.

“Appendix B” is the 2006 ROD.

“Appendix C” is the map of the Site.

“Appendix D” is the SOW.

“Appendix E” is the Draft Easement.

“Appendix F” is the complete list of Cashout Settling Defendants and the amounts each is required to pay.

“Appendix G” is the Preauthorization Decision Document.

“Appendix H” is the Natural Resources Damages Compensation Plan and Settlement Agreement.

“Appendix I” is the List of Property in the Institutional Control Zone with a Restrictive Covenant Recorded Prior to the Effective Date.

“Appendix J” is the List of Property in the Institutional Control Zone Not Connected to the Public Water System and Without a Recorded Restrictive Covenant.

“Appendix K” is the List of Property in the Institutional Control Zone Connected to the Public Water System but Without a Recorded Restrictive Covenant.

XXXII. COMMUNITY RELATIONS

128. Performing Settling Defendants shall submit to EPA and the State under Section V.A.4 of the SOW a community relations support plan which will be incorporated into the community relations plan developed by EPA. EPA will determine the appropriate role for the Performing Settling Defendants under the plan. Performing Settling Defendants shall also cooperate with EPA and the State in providing information regarding the Work to the public. As requested by EPA or the State, Performing 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 or the State to explain activities at or relating to the Site.

XXXIII. MODIFICATION

129. Material modifications to this Consent Decree, including the SOW, shall be in writing, signed by the Parties, and shall be effective upon approval by the Court. Non-material modifications to this Consent Decree, including the SOW, shall be in writing and shall be effective when signed by the Parties. A modification to the SOW shall be considered material if it fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any modification to the SOW, EPA will provide the State with a reasonable opportunity to review and comment on the proposed modification.

130. Modifications (non-material or material) that do not affect the obligations of, and that fully protect the benefits afforded to, Cashout Settling Defendants may be executed without the signatures of the Cashout Settling Defendants.

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

XXXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

132. This Consent Decree shall be lodged with the Court for a period of not less than 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.

133. 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.

XXXV. SIGNATORIES/SERVICE

134. Each undersigned representative of a Settling Defendant to this Consent Decree, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, the Assistant Attorney General for the State, and the Director of the Bureau of Remediation and Waste Management of the Maine Department of Environmental Protection 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.

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

136. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any

applicable local rules of this Court, including, but not limited to, service of a summons. The parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XXXVI. FINAL JUDGMENT

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

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

SO ORDERED THIS \_\_ DAY OF \_\_\_\_\_, 20\_\_.

---

United States District Judge

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

FOR THE UNITED STATES OF AMERICA:

/s/ John C. Cruden  
JOHN C. CRUDEN  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

11/4/09  
Date

/s/ Mark A. Gallagher  
MARK A. GALLAGHER  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

PAULA SILSBY  
United States Attorney  
District of Maine

EVAN J. ROTH  
Assistant United States Attorney  
District of Maine  
P.O. Box 9718  
Portland, ME 04104-5018

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

10/26/09

Date

/s/ Ira W. Leighton

IRA W. LEIGHTON

Acting Regional Administrator

U.S. Environmental Protection Agency

Region 1

One Congress Street, Suite 1100 (RAA)

Boston, MA 02114

10/26/09

Date

/s/ Sarah Meeks

SARAH MEEKS

Enforcement Counsel

U.S. Environmental Protection Agency

Region 1

One Congress Street, Suite 1100 (SES)

Boston, MA 02114

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

FOR THE STATE OF MAINE:

JANET T. MILLS  
Attorney General

10/16/09  
Date

/s/ Mary M. Sauer  
MARY M. SAUER  
Assistant Attorney General  
Office of the Attorney General  
6 State House Station  
Augusta, Maine 04333-0006

FOR THE MAINE DEPARTMENT OF  
ENVIRONMENTAL PROTECTION:

10/14/09  
Date

/s/ Mark Hyland  
MARK HYLAND  
Director  
Bureau of Remediation and Waste Management  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

Allen, Greig & Perry, Inc., For Itself and on Behalf of  
METCO

9/4/09  
Date

Signature: /s/ Roger Michaud  
Name (print): Roger Michaud  
Title: VP (AG&P Inc.) Pres. METCO  
Address: P.O. Box 2741  
South Portland, ME  
04116



Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

Algra, Inc./Gray Ford Sales, For Itself and on Behalf of  
Adria Gray

Date

Signature: /s/ Adria Gray

Name (print): Adria Gray

Title:

Address: 143 Perham St.  
Farmington, ME 04938

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Amoco Union/Tre-Clif, Inc./Union Street Citgo

9/2/09  
Date

Signature: /s/ Garfield Foss  
Name: Garfield Foss  
Title: President  
Address: 27 Perkins Street  
Bangor, Maine 04401

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Bangor Tire Co.:

8/24/09

Date

Signature: /s/James J. Rocha  
Name: James J. Rocha  
Title: President  
Address: 35 Market St.  
P.O. Box 598  
Bangor, Maine 04401

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For City of Bangor:

8/27/09

Date

Signature: /s/ Edward A. Barrett

Name: Edward A. Barrett

Title: City Manager

Address: 73 Harlow Street  
Bangor, Maine 04401

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Baxter State Park:

8/31/09

Date

Signature: /s/ Paul Stern  
Name: Paul Stern  
Title: Office of the Attorney General  
Address: 6 State House Station  
Augusta, ME 04333-0006

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Bean & Conquest Inc.:

9/4/09  
Date

Signature: /s/ John J. Quink  
Name: John J. Quink  
Title: President  
Address: 293 Hogan Rd.  
Bangor, ME 04401

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Berry's Exxon:

8/25/09

Date

Signature: /s/ Charles Berry

Name: Charles Berry

Title:

Address: 27 Pleasant St.  
Machias, ME 04654-1012

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For B Gas Inc.:

8/27/09

Date

Signature: /s/ Carol Lipton  
Name: Carol Lipton  
Title: President - BGAS Inc.  
Address: 195 Scarlett Dr.  
Commack, NY 11725



Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Bangor Hydro-Electric Company:

9/11/09

Date

Signature: /s/ Peter E. Dawes  
Name: Peter E. Dawes  
Title: Vice President of Finance  
Address: 970 Illinois Ave  
P.O. Box 932  
Bangor, ME 04401-0932

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Brake Service & Parts, Inc.:

8/24/09

Date

Signature: /s/ Richard B. Harnum  
Name: Richard B. Harnum  
Title: Senior VP - Assistant Treasurer  
Address: P.O. Box 929  
Bangor, ME 04402-0929

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For City of Brewer:

9/16/09

Date

Signature: /s/ Stephen Bost  
Name: Stephen Bost  
Title: City Manager  
Address: 80 N. Main St.  
Brewer, ME 04412

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For C.B. Kenworth, Inc.:

9/2/09  
Date

Signature: /s/ Arthur W. Hicks  
Name: Arthur W. Hicks  
Title: President  
Address: 42 Wallace Ave.  
S. Portland, ME 04106

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For City of Caribou:

9/14/09

Date

Signature: /s/ Steven R. Buck  
Name: Steven R. Buck  
Title: City Manager  
Address: 25 High Street  
Caribou, ME 04736

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Central Maine Power Company:

9/15/09

Date

Signature: /s/ Eric N. Stinneford  
Name: Eric N. Stinneford  
Title: V.P. - Controller, Treasurer & Clerk  
Address: 83 Edison Dr.  
Augusta, ME 04336

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Chadwick-BaRoss, Inc.:

9/4/09  
Date

Signature: /s/ Ryan Thebarge  
Name: Ryan Thebarge  
Title: Treasurer  
Address: 160 Warren Ave.  
Westbrook, ME 04092

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Chadwick-BaRoss, Inc./Timberland Machines for itself  
and on behalf of Timberland Machines:

9/4/09

Date

Signature: /s/ Stuart Welch  
Name: Stuart Welch  
Title: President and CEO  
Address: 160 Warren Ave  
Westbrook, ME 04092



Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Cianbro Corporation:

9/14/09

Date

Signature: /s/ Thomas E. Stone  
Name: Thomas E. Stone  
Title: Executive Vice President  
Address: P.O. Box 1000  
One Hunnewell Square  
Pittsfield, ME 04967

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Cold Brook Saab/Holden Saab:

9/11/09

Date

Signature: /s/ Glen H. Holden  
Name: Glen H. Holden  
Title: Owner Retired  
Address: 1121 East Madison Rd.  
Madison, ME 04950

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Cowan's Service Station, Inc.:

8/28/09

Date

Signature: /s/ Phillip G. Cowan

Name: Phillip G. Cowan

Title: President

Address: 146 So. Main Street  
Brewer, ME 04412

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Cyr Bus Lines / John T. Cyr & Sons, Inc. For itself and  
on behalf of Cyr Bus Lines:

8/25/09

Date

Signature: /s/ Joseph Cyr  
Name: Joseph Cyr  
Title: President  
Address: P.O. Box 368  
Old Town, ME 04468

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For D&F f/k/a Maine Test Borings, Inc.:

8/29/09

Date

Signature: /s/ Donald B. Wiswell  
Name: Donald B. Wiswell  
Title: President  
Address: 93 River Rd.  
Orrington, ME 04474-3041

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Darling's:

9/3/09  
Date

Signature: /s/ Charles G. Rohn  
Name: Charles G. Rohn  
Title: Executive Vice President  
Address: 96 Parkway South Unit 1  
Brewer, ME 04412

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Dead River Co./Robinson & Kenny for itself and on behalf of Robinson & Kenny:

9/14/09

Date

Signature: /s/ Leslie Anderson  
Name: Leslie Anderson  
Title: Director Risk Mgmt.  
Address: Two Monument Sq. #900  
Portland, ME 04112

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Diamond International Corp.:

9/4/09  
Date

Signature: /s/ Victor Stronski  
Name: Victor Stronski  
Title: Authorized Signatory  
Address: 1000 Palmer Road  
6 Brooklands (Apt. 2A)  
Bronxville, NY 10708



Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Town of Dover-Foxcroft for itself and on behalf of  
Piscataquis, Maine:

8/27/09

Date

Signature: /s/ Jack J. Clukey  
Name: Jack J. Clukey  
Title: Town Manager  
Address: Town of Dover-Foxcroft  
48 Morton Ave., Suite A  
Dover-Foxcroft, ME 04426

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Down East Toyota:

9/11/09

Date

Signature: /s/ Edward O. Deerling  
Name: Edward O. Deerling  
Title: President  
Address: 652 Wilson Street  
Brewer, ME 04412-0248

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Eastern Maine Community College f/k/a Eastern Maine  
Vo-Tech School:

9/9/09

Date

Signature: /s/ Joyce B. Hedlund  
Name: Joyce B. Hedlund  
Title: President  
Address: Eastern Maine Community College  
354 Hogan Road  
Bangor, ME 04401

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Town of Farmington:

8/27/09

Date

Signature: /s/ Richard P. Davis  
Name: Richard P. Davis  
Title: Town Manger  
Address: 153 Farmington Falls Rd.  
Farmington, ME 04938

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Fru-Con Construction Corporation for itself and on behalf of H.E. Sargent:

9/8/09

Date

Signature: /s/ Clement V. Mitchell  
Name: Clement V. Mitchell  
Title: President & CEO  
Address: 4310 Prince William Parkway  
Suite 200  
Woodbridge, VA 22192

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For General Electric Company:

9/14/09  
Date

Signature: /s/ Richard Lubert  
Name: Richard Lubert  
Title: GMEHS  
Address: GE  
1 River Rd., Bld 43  
Schenectady, NY 12345

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Gerald Pelletier, Inc.:

|      |            |  |
|------|------------|--|
| Date | Signature: | <u>/s/ Eldon Pelletier</u>               |
|      | Name:      | Eldon Pelletier                          |
|      | Title:     | President                                |
|      | Address:   | P.O. Box 689<br>Millinodict, Maine 04462 |

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For The Goodyear Tire & Rubber Company for itself and  
on behalf of The Kely-Springfield Tire Company:

9/14/09

Date

Signature: /s/ Donald E. Stanley  
Name: Donald E. Stanley  
Title: Vice President  
Address: 1144 East Market Street  
Akron, OH 44316



Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Gray's Exxon:

8/31/09

Date

Signature: /s/ Donald Gray

Name: Donald Gray

Title:

Address: P.O. Box 202  
Blue Hill, ME 04614

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For H. A. Hersey, Inc.:

9/2/09  
Date

Signature: /s/ Lindon S. Brown II  
Name: Lindon S. Brown II  
Title: President  
Address: The Brown Company  
34 Summer St. II  
Bangor, ME 04401

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For H. C. Haynes, Inc.:

9/1/09  
Date

Signature: /s/ Ginger Maxwell  
Name: Ginger Maxwell  
Title: Treasurer  
Address: P.O. Box 96  
Winn, ME 04495

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For H. O. Bouchard, Inc.:

8/25/09

Date

Signature: /s/ Kenneth W. Beal

Name: Kenneth W. Beal

Title: Treasurer

Address:

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Harmon Tire for itself and on behalf of Harmon's  
Texaco:

9/12/09

Date

Signature: /s/ Albert Harmon  
Name: Albert Harmon  
Title: President  
Address: 220 High Street  
Ellsworth, ME 04605

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Harold MacQuinn, Inc.:

9/9/09  
Date

Signature: /s/ Ronald P. MacQuinn Jr.  
Name: Ronald P. MacQuinn Jr.  
Title: President  
Address: P.O. Box 789  
Ellsworth, ME 04605

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Harry's Auto Sales:

9/11/09

Date

Signature: /s/ Harry E. Thomas, Jr.

Name: Harry E. Thomas, Jr.

Title: President

Address: 316 State Street  
Presque Isle, ME 04769

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For HCB Holdings, Inc. for itself and on behalf of Hews  
Company, Inc. And Hews Body Co.:

\_\_\_\_\_  
Date

Signature: /s/ Robert E. Haus  
Name: Robert E. Haus  
Title: President  
Address: 190 Rumery St.  
So. Portland, ME 04106



Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Highliner Foods (USA) Inc. for itself and on behalf of  
National Sea Products, Inc.:

9/8/09

Date

Signature: /s/ Clair E. Milton  
Name: Clair E. Milton  
Title: General Counsel & Secretary  
Address: High Liner Foods Incorporated  
P.O. Box 910  
Lunenburg, NS B0J2C0

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Hight Chevrolet Buick, Inc.:

9/18/09

Date

Signature: /s/ Louis J. Hocht  
Name: Louis J. Hocht  
Title: Treasurer  
Address: P.O. Box 40  
Skowhegon, ME 04976

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Town of Houlton, Maine:

8/28/09

Date

Signature: /s/ Doug Hazlett

Name: Doug Hazlett

Title: Town Manager

Address: 21 Water Street  
Houlton, ME 04730

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Hurricane Island Outward Bound School for itself and  
on behalf of Hurricane Outward Bound:

10/2/09

Date

Signature: /s/ Michael Dunn  
Name: Michael Dunn  
Title: Treasurer  
Address: c/o Outwood Bound  
100 Mystery Point Road  
Carrison, NY 10524

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Husson University:

9/14/09

Date

Signature: /s/ William H. Beardslie

Name: William H. Beardslie

Title: President

Address: Husson University  
1 College Circle  
Bangor, ME 04401

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For International Paper Company for itself and on behalf of  
Champion International Corporation and St. Regis Paper  
Company:

9/22/09  
Date

Signature: /s/ Steven J. Ginski  
Name: Steven J. Ginski  
Title: Chief Counsel - Environment, Health &  
Safety  
Address: International Place One  
6400 Poplar Avenue  
Memphis, TN 38197

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Interstate Uniform Services/Unifirst Corp. for itself and  
on behalf of Interstate Uniform Services:

9/1/09

Date

Signature: /s/ John R. Badey  
Name: John R. Badey  
Title: Vice President  
Address: 68 Jonspin Road  
Wilmington, ME 01887

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Irving Oil Co. For itself and on behalf of D.W. Small & Sons, Inc.:

9/14/09

Date

Signature: /s/ Harry Hadiaris  
Name: Harry Hadiaris  
Title: Manager  
Address: Irving Oil Corporation  
190 Commerce Way  
Portsmouth, NH 03801



Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For J. K. Wright, Inc.:

9/10/09

Date

Signature: /s/ J. Kenton Wright

Name: J. Kenton Wright

Title:

Address: 404 Wellington Ct.  
Venice, FL 34292

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Kennebec Equipment Rental:

9/3/09  
Date

Signature: /s/ David W. Wilson  
Name: David W. Wilson  
Title: President  
Address: c/o Daniel J. Dubord, Esq.  
226 Main Street, Ste. 3  
Waterville, ME 04901

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For The Lane Construction Corporation:

9/2/09  
Date

Signature: /s/ Jay S. Cruickshank  
Name: Jay S. Cruickshank  
Title: Vice President Legal  
Address: 90 Fieldstone Court  
Cheshire, CT 06410

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Town of Lincoln:

8/25/09

Date

Signature: /s/ Lisa J. Goodwin

Name: Lisa J. Goodwin

Title: Town Manager

Address: 63 Main Street  
Lincoln, ME 04457

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Town of Littleton:

9/8/09  
Date

Signature: /s/ Gerald Miller  
Name: Gerald Miller  
Title: Chair Selectman  
Address: 1536 U S Highway  
Littleton, ME 04730

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Linnehan Auto Sales:

|      |            |                                     |
|------|------------|-------------------------------------|
| Date | Signature: | <u>/s/ John Linnchan</u>            |
|      | Name:      | John Linnchan                       |
|      | Title:     | C.O.O.                              |
|      | Address:   | P.O. Box 553<br>Ellsworth, ME 04605 |

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For L.H. Luttrell:

8/24/09

Date

Signature: /s/ Richard B. Harnum  
Name: Richard B. Harnum  
Title: Senior VP - Assistant Treasurer  
Address: P.O. Box 929  
Bangor, ME 04402-0929

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Town of Machias:

8/26/09

Date

Signature: /s/ Betsy Fitzgerald

Name: Betsy Fitzgerald

Title: Town Manager

Address: P.O. Box 418  
Machias, ME 04654



Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Maine Dept. of Transportation:

9/10/09  
Date

Signature: /s/ David Cole  
Name: David Cole  
Title: Commissioner  
Address: SHS 16  
Maine DOT  
Augusta, ME 04333

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Maine Forest Service:

9/1/09  
Date

Signature: /s/ Lucinda E. White  
Name: Lucinda E. White  
Title: Assistant Attorney General  
Address: Office of the Attorney General  
6 State House Station  
Augusta, ME 04333-0006

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Maine National Guard:

9/29/09

Date

Signature: /s/ Major General John W. Libby

Name: Major General John W. Libby

Title: The Adjutant General

Address: Main National Guard  
33 State House Station  
Augusta, ME 04333-0033

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Maine Potato Growers, Inc.:

8/31/09

Date

Signature: /s/ Pierre Patenaude  
Name: Pierre Patenaude  
Title: President & CEO  
Address: 56 Parsons Street  
Presque Isle, ME 04769

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Regional School Unit #20 for itself and on behalf of  
MSAD #56:

9/14/09

Date

Signature: /s/ Bruce A. Mailloux  
Name: Bruce A. Mailloux  
Title: Superintendent of Schools  
Address: P.O. Box 363  
6A Lions Way  
Belfast, ME 04915

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Regional School Unit #67 for itself and on behalf of  
MSAD #67:

9/2/09

Date

Signature: /s/ Michael F. Marcinkus  
Name: Michael F. Marcinkus  
Title: Superintendent of Schools  
Address: R.S.U. No. 67  
57 Main Street  
Lincoln, ME 04457

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For M.S.A.D. No. 9:

9/11/09

Date

Signature: /s/ Michael Cornier  
Name: Michael Cornier  
Title: Superintendent of Schools  
Address: M.S.A.D. No. 9  
115 Learning Lane  
Farmington, ME 04938

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Maine State Police:

9/1/09  
Date

Signature: /s/ Luinda E. White  
Name: Luinda E. White  
Title: Assistant Attorney General  
Address: 6 State House Station  
Augusta, ME 04333-0006



Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For McFarland Motors, Inc. for itself and on behalf of  
Bangor Dodge, Inc.:

9/5/09

Date

Signature: /s/ Phillip M. McFarland

Name: Phillip M. McFarland

Title: President

Address: P.O. Box 757  
Stonington, ME 04681

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Town of Millinocket:

9/14/09

Date

Signature: /s/ Eugene Conlegue  
Name: Eugene Conlegue  
Title: Town Manager  
Address: 197 Penobscot Ave.  
Millinocket, ME 04462

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For N. H. Bragg & Sons:

9/25/09

Date

Signature: /s/ John W. Bragg  
Name: John W. Bragg  
Title: President  
Address: 92 Perry Road  
Bangor, ME 04401

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Northern New England Telephone Operations, LLC for  
itself and on behalf of New England Telephone and  
Telegraph Company:

9/4/09  
Date

Signature: /s/ Shirley J. Linn  
Name: Shirley J. Linn  
Title: Executive Vice President  
Address: 521 E. Morehead St., Suite 500  
Charlotte, NC 28202

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Pike Industries, Inc. For itself and on behalf of Tilcon  
Maine, Inc.

9/10/09

Date

Signature: /s/ Brian J. Donovan  
Name: Brian J. Donovan  
Title: Corp. EHS & Land Manager  
Address: 3 Eastgate Park Road  
Belmont, NH 03220

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Rawcliffe's, Inc., Rawcliffe's Garage, & Rawcliffe's  
Mobil:

9/14/09

Date

Signature: /s/ Jeff Rawcliffe  
Name: Jeff Rawcliffe  
Title: President  
Address: P.O. Box 572  
Hampden, ME 04444-0572

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Rowell's Garage:

9/9/09  
Date

Signature: /s/ Karen G. Pomroy  
Name: Karen G. Pomroy  
Title: President, Rowell's Garage  
Address: 191 E. Main St., P.O. Box 129  
Dover-Foxcraft, ME 04426

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Ryder Truck Rental, Inc.:

9/29/09

Date

Signature: /s/ Sanford J. Hodes  
Name: Sanford J. Hodes  
Title: VP - Deputy General Counsel  
Address: 11690 NW 105 Street  
Miami, FL 33178



Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Sears, Roebuck and Co.:

9/14/09

Date

Signature: /s/ Diana J. Hsu  
Name: Diana J. Hsu  
Title: Assistant General Counsel  
Address: Sears Holdings Corporation  
3333 Beverly Rd.  
Hoffman Estates, IL 60179

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Shepard Chevrolet, Inc.:

9/29/09

Date

Signature: /s/ Glenn Shepard

Name: Glenn Shepard

Title: President

Address: P.O. Box 605  
181 New County Rd.  
Rockland, ME 04841

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Shepard Nissan, Inc.:

9/28/09

Date

Signature: /s/ Neal Shepard

Name: Neal Shepard

Title: President

Address: P.O. Box 605  
Rockland, ME 04841

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Swett's Tire & Auto, Inc.:

8/31/09

Date

Signature: /s/ James Sweit  
Name: James Sweit  
Title: President  
Address: 451 Hogan Road  
Bangor, ME 04401

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For THG Corporation f/k/a The Hope Group Corp. for  
itself and on behalf of Leen's Electric:

9/14/09

Date

Signature: /s/ James Hannon  
Name: James Hannon  
Title: CFO  
Address: The Corporation  
70 Bearfoot Road  
Northboro, MA 01532

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Town Auto Sales, Inc. for itself and on behalf of  
John F. Partridge Sr.:

9/3/09

Date

Signature: /s/ John Partridge  
Name: John Partridge  
Title: President  
Address: P.O. Box 724  
Ellsworth, ME 04605

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For University of Maine System:

8/28/09

Date

Signature: /s/ Rebecca M. Wyke  
Name: Rebecca M. Wyke  
Title: Vice President for Finance  
Address: UMS  
16 Central Street  
Bangor, ME 04401

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Village Subaru Inc./Village Mobil:

9/4/09  
Date

Signature: /s/ John J. Quirk  
Name: John J. Quirk  
Title: President  
Address: 293 Hogan Road  
Bangor, ME 04401



Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For William T. Gardner & Sons, Inc.:

8/25/09

Date

Signature: /s/ Randau A. Bishop

Name: Randau A. Bishop

Title: Treasurer

Address: 16 Access Road

P.O. Box 189

Lincoln, ME 04457

Signature Page for Consent Decree Regarding West Site/Hows Corner Superfund Site.

For Webber Oil Company:

8/24/09

Date

Signature: /s/ Richard B. Harnum  
Name: Richard B. Harnum  
Title: Senior V.P. - Assistant Treasurer  
Address: P.O. Box 929  
Bangor, ME 04401