

Sutton Brook Disposal Area Superfund Site Consent Decree

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

B. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Federal and State natural resource trustees on February 6, 2008, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal and/or State trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

C. 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 Sutton Brook Disposal Area Superfund Site in Tewksbury, Massachusetts (“Site”), together with accrued interest; (2) performance of response actions at the Site by the defendants consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (“NCP”); and (3) payment of Natural Resource Damages.

D. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the Commonwealth of Massachusetts (the “Commonwealth”) on February 6, 2008, of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the Commonwealth with an opportunity to participate in such negotiations and be a party to this Consent Decree.

E. The Commonwealth, by and through the Massachusetts Department of Environmental Protection (“MassDEP”) and the Massachusetts Attorney General, has also filed a complaint against the defendants in this Court alleging that the defendants are liable to the Commonwealth under Section 107 of CERCLA, 42 U.S.C. § 9607, and the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, M. G. L. c. 21E (“Chapter 21E”), for: (1) reimbursement of response costs incurred or to be incurred by the Commonwealth for response actions at the Site, together with accrued interest; (2) performance of response actions, including without limitation operation and maintenance activities required to maintain the effectiveness of the remedial action to be implemented at the Site; and (3) payment of Natural Resource Damages.

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

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G. Pursuant to Chapter 21E, MassDEP placed the Site on its List of Disposal Sites and Locations to be Investigated, dated April 15, 1992.

H. In response to a release or threat of release of oil or hazardous material at or from the Site, in accordance with Chapter 21E and the Massachusetts Contingency Plan, 310 C.M.R. 40.0000 (“the MCP”), beginning in 1992 or earlier, MassDEP conducted or arranged to conduct certain site assessment, investigation and/or response actions at the Site.

I. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on June 14, 2001, 66 Fed. Reg. 32235.

J. On October 10, 2001, EPA issued a Unilateral Administrative Order which ordered certain Settling Defendants to complete the removal action initiated by EPA, specifically to remove stockpiled contaminated soil from the Site and dispose of it at an off-Site location.

K. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, certain Settling Defendants commenced, pursuant to an agreement reached in February 2004, a Remedial Investigation and Feasibility Study (“RI/FS”) for the Site pursuant to 40 C.F.R. § 300.430.

L. Certain Settling Defendants completed a Remedial Investigation (“RI”) Report in February 2007, and completed a Feasibility Study (“FS”) Report in May 2007.

M. 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 June 15, 2007, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

N. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision (“ROD”), executed on September 27, 2007, on which the Commonwealth has given its concurrence on September 26, 2007. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b). The ROD estimates that the total volume of material, including waste, at the Site is 1.9 million cubic yards in the Northern Lobe and .3 million cubic yards in the Southern Lobe.

O. Based on the information presently available to EPA and the Commonwealth, EPA and the Commonwealth believe that the Work (as defined in Section IV) will be properly and promptly conducted by Performing Settling Defendants (as defined below) if conducted in accordance with the requirements of this Consent Decree and its appendices.

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

Q. 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), and pendent subject matter jurisdiction over the claims arising under the laws of the Commonwealth. This Court also has personal jurisdiction over 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, the Commonwealth and upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling 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 (as defined below) 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 under this Consent Decree in accordance with its terms. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with Performing Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3), and of Section 5(c)(3) of Chapter 21E.

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IV. DEFINITIONS

4. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. With respect to the Commonwealth's claims under Chapter 21E, terms used in this Consent Decree which are defined in Chapter 21E or the MCP shall have the meanings assigned to them in Chapter 21E or the MCP to the extent they are not defined in or inconsistent with CERCLA or the NCP. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"Approval by EPA," "Approved by EPA," "Approved," and "Approval" shall mean the issuance of a written approval document from EPA approving, approving with conditions, and/or modifying a submission in accordance with Section XI. With respect to Section IX, "Approval by EPA and MassDEP," and "Approved by EPA and MassDEP" shall mean the issuance of written approval documents by EPA and MassDEP approving, approving with conditions, and/or modifying a submission.

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

"Cashout Settling Defendants" shall mean the parties identified in Appendix D-2.

"Commonwealth" shall mean the Commonwealth of Massachusetts.

"Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXVIII). 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.

"De Minimis Settling Defendants" shall mean the parties identified in Appendix D-3.

"De Minimis Trust" shall mean the Sutton Brook Disposal Area Superfund Site De Minimis Settlement Trust. The Sutton Brook Disposal Area Superfund Site De Minimis Settlement Trust Agreement is attached hereto as Appendix F-1.

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

"EEA" shall mean the Massachusetts Executive Office of Energy and Environmental Affairs and any successor departments, agencies or instrumentalities of the Commonwealth.

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“Effective Date” shall be the earlier of the date upon which this Consent Decree is entered by the Court or the date upon which the order granting the motion to enter the Consent Decree is entered by the Court, as recorded on the Court docket, except as otherwise provided in this Consent Decree.

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

“Institutional Controls” shall mean those aspects of the response action involving legal and administrative measures, but not engineering controls, required to ensure the long-term effectiveness and protectiveness of response actions performed at the Site. Institutional Controls may include, but not be limited to, a grant of environmental restriction and easement (hereinafter referred to as a “GERE”), the form of which is attached as Appendix E of this Consent Decree.

“Interest” shall mean, for payments owed to the United States, 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); and for payments owed to the Commonwealth, the rate set forth in M. G. L. c. 21E, § 13. The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest for payments owed to the United States is subject to change on October 1 of each year.

“Massachusetts Contingency Plan” or “MCP” shall mean the regulations promulgated pursuant to M. G. L. c. 21E, codified at 310 C.M.R. 40.0000, et seq., and any amendments thereto.

“MassDEP” shall mean the Massachusetts Department of Environmental Protection and any successor departments or agencies of the Commonwealth.

“M. G. L. c. 21C” or “Chapter 21C” shall mean the Massachusetts Hazardous Waste Management Act, as amended.

“M. G. L. c. 21E” or “Chapter 21E” shall mean the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, as amended.

“Municipal Solid Waste” or “MSW” shall mean waste material: (a) generated by a household (including a single or multifamily residence); or (b) generated by a commercial, industrial or institutional entity, to the extent that the waste material (i) is essentially the same as waste normally generated by a household; (ii) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and (iii) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.

“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.

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“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 relating to the Site, including the reasonable cost of assessing such damages, as provided in Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C), incurred as a result of releases or threats of release of hazardous substances at or from the Site; and, when referring to the Commonwealth, shall also mean injury to, destruction of, or loss of Natural Resources relating to the Site, including the reasonable cost of assessing such damages, as provided in Section 5(a) of Chapter 21E, incurred or suffered as a result of releases or threats of release of hazardous substances at or from the Site.

“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 DOI represented by the Fish and Wildlife Service as the federal trustee for Natural Resources regarding the Site, and the EEA as the state trustee for Natural Resources.

“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, including without limitation the Institutional Controls Plan, approved or developed by EPA pursuant to Section VI (Performance of the Work by Performing Settling Defendants) and the Statement of Work (“SOW”).

“Oversight Costs” shall mean all costs, including but not limited to direct and indirect costs, that EPA and MassDEP and their representatives (including contractors) incur after the date of lodging of the Consent Decree in conducting the following activities: reviewing, discussing, commenting on and attending meetings related to plans, proposals, studies, or other items relating to the Work; verifying the Work; and overseeing Performing Settling Defendants’ implementation of the Work; but exclusive of, *inter alia*, any such costs incurred by the United States or the Commonwealth pursuant to Paragraph 9 (Notice to Successors in Title), Sections VII (Remedy Review), IX (Access and Institutional Controls), XV (Emergency Response), and Paragraph 111 of Section XXI (Work Takeover); community relations costs, enforcement support costs; record management costs; ATSDR costs; accrued Interest; or the costs incurred by the United States or the Commonwealth in enforcing the terms of this Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to Section XIX (Dispute Resolution) and all litigation costs. Oversight Costs shall not include United States Future Response Costs or State Future Response Costs.

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

“Parties” shall mean the United States, the Commonwealth of Massachusetts and Settling Defendants.

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“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 ROD and Section 5 of the SOW.

“Performing Settling Defendants” shall mean the parties identified in Appendix D-1.

“Plaintiffs” shall mean the United States and the Commonwealth of Massachusetts.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Site signed on September 27, 2007, by the Regional Administrator, EPA Region 1, or his/her delegate, and all attachments thereto. The ROD is attached as Appendix A.

“Remedial Action” shall mean those activities, except for Remedial Design and Operation and Maintenance, to be undertaken by Performing Settling Defendants to implement the ROD, in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

“Remedial Action Work Plan” shall mean the document developed pursuant to Paragraph 12 and approved by EPA, and any amendments thereto.

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

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

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

“Settling Defendants” shall mean Performing Settling Defendants, Cashout Settling Defendants and De Minimis Settling Defendants.

“Site” shall mean the Sutton Brook Disposal Area Superfund Site, encompassing approximately 100 acres, located off South Street in Tewksbury, Middlesex County, Massachusetts, and depicted generally on the map attached as Appendix C.

“State” shall mean the Commonwealth of Massachusetts.

“State Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the Commonwealth incurs pursuant to this Consent Decree after the date of lodging, other than Oversight Costs, and shall include, but not be limited to: payroll costs; contractor costs; travel costs; laboratory costs; costs incurred pursuant to Paragraph 9 (Notice to Successors in Title), Sections VII (Remedy Review), IX (Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement Institutional Controls including, but not limited to, the amount of

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just compensation, and costs incurred in the management or administration of Institutional Controls following implementation including, but not limited to, costs related to Institutional Controls compliance and enforcement activities and any amendment or other modification of the Institutional Controls), XV (Emergency Response), and Paragraph 111 of Section XXI (Work Takeover); community relations costs; enforcement support costs; records management costs; accrued Interest; and the costs incurred by the Commonwealth in enforcing the terms of this Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to Section XIX (Dispute Resolution) and all litigation costs.

“State Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the Commonwealth paid or incurred at or in connection with the Site up to the date of the lodging of the Consent Decree, plus Interest on all such costs which was accrued pursuant to Section 13 of Chapter 21E, 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 B to this Consent Decree, and any modifications made in accordance with this Consent Decree.

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

“Sutton Brook Disposal Area Superfund Site Special Account” shall mean the special account, within the EPA Hazardous Substances Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and the Administrative Order by Consent For Remedial Investigation and Feasibility Study for the Sutton Brook Disposal Area Superfund Site, EPA Docket No. CERCLA 01-2004-0002.

“Town” shall mean the Town of Tewksbury, Massachusetts, which is one of the Performing Settling Defendants.

“Trust” shall mean the Sutton Brook Disposal Area Superfund Site Settlement Trust. The form of the Sutton Brook Disposal Area Superfund Site Settlement Trust Agreement is attached hereto as Appendix F-2.

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

“United States Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs after the date of lodging of this Consent Decree pursuant to the provisions of this Consent Decree other than those costs specifically included in the definition of Oversight Costs. United States Future Response Costs shall include, but not be limited to: payroll costs; contractor costs; travel costs; laboratory costs; costs incurred pursuant to Paragraph 9 (Notice to Successors in Title), Sections VII (Remedy Review), IX

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(Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement Institutional Controls including, but not limited to, the amount of just compensation, and costs incurred in the management or administration of Institutional Controls following implementation including, but not limited to, costs related to Institutional Controls compliance and enforcement activities and any amendment or other modification of the Institutional Controls), XV (Emergency Response), and Paragraph 111 of Section XXI (Work Takeover); community relations costs; enforcement support costs; records management costs; accrued Interest; and the costs incurred by the United States in enforcing the terms of this Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to Section XIX (Dispute Resolution) and all litigation costs.

“United States Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid or incurred at or in connection with the Site up to the date of the lodging of the Consent Decree, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); (4) any “hazardous material” or “oil” under M. G. L. c. 21E, § 2; and (5) any “hazardous waste” under M. G. L. c. 21C, § 2.

“Work” shall mean all activities, including without limitation all Operation and Maintenance, Performing Settling Defendants are required to perform under this Consent Decree, except those required by Section XXV (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment by the design and implementation of response actions at the Site by Settling Defendants, to reimburse response costs of Plaintiffs, to provide for reimbursement by the Settling Defendants of Natural Resource Damages incurred by DOI and EEA, and to resolve the claims of Plaintiffs against Settling Defendants as provided in this Consent Decree. With respect to each De Minimis Settling Defendant, the mutual objectives of the Parties are also:

a. to reach a final settlement among the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), and Chapter 21E, that allows each De Minimis Settling Defendant to make a cash payment, including a premium, to resolve its alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Chapter 21E, for injunctive relief with regard to the Site, for response costs incurred and to be incurred at or in connection with the Site, and for Natural Resource Damages, thereby reducing litigation relating to the Site;

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b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a number of potentially responsible parties from further involvement at the Site; and

c. to obtain settlement with each De Minimis Settling Defendant for its fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, by MassDEP, and by other persons, and to provide for full and complete contribution protection for each De Minimis Settling Defendant with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), and Chapter 21E.

6. Commitments by Settling Defendants.

a. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth in this Consent Decree or developed by Performing Settling Defendants and approved by EPA, after a reasonable opportunity for review and comment by the Commonwealth, pursuant to this Consent Decree. Performing Settling Defendants shall also reimburse the United States for United States Future Response Costs and Oversight Costs and the Commonwealth for State Past Response Costs, State Future Response Costs and Oversight Costs as provided in this Consent Decree. Performing Settling Defendants shall also compensate the United States and the Commonwealth 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 Commonwealth under this Consent Decree are joint and several. In the event of the insolvency of any Performing Settling Defendant or the failure by any Performing Settling Defendant to implement any requirement of this Consent Decree, the remaining Performing Settling Defendants shall fulfill the obligations of the non-performing Performing Settling Defendant and all remaining requirements of the Consent Decree; provided, however, that only the Town shall be obligated pursuant to Paragraph 56.

c. Each Cashout Settling Defendant shall pay or cause to be paid to the Trust the amount specified for that Cashout Settling Defendant in Appendix D-2 to this Consent Decree, as provided in this Consent Decree.

d. Each De Minimis Settling Defendant shall pay or cause to be paid to the De Minimis Trust the amount specified for that De Minimis Settling Defendant in Appendix D-3 to this Consent Decree, as provided in this Consent Decree. However, De Minimis Settling Defendant W.R. Grace & Co. and certain of its affiliates and subsidiaries (collectively, "Grace") have filed a petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court"). Grace expects to emerge from bankruptcy in late 2009 or early 2010. In order to receive authority to remit its payment pursuant to Paragraph 58 (Payments by De Minimis Settling Defendants), Grace shall file and serve a Notice of Settlement with the Bankruptcy Court within 30 days of the Effective

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Date to allow review by creditor groups and other interested parties of Grace's intent to make its payment pursuant to Paragraph 58 (Payments by De Minimis Settling Defendants) as an unsecured, pre-petition, non-priority claim against Grace's Chapter 11 estates in the amount set forth in Appendix D-3 to this Consent Decree. The Notice of Settlement shall state that Grace's obligation to pay the amount set forth in Appendix D-3 to this Consent Decree shall not become effective and binding until, following Grace's filing and service of the Notice of Settlement, all time periods provided for therein have passed without objection or any objection that was made has been resolved or overruled by the Bankruptcy Court. Upon allowance, Grace's payment pursuant to Paragraph 58 (Payments by De Minimis Settling Defendants) shall be made in the same manner as all other similarly situated general unsecured claims pursuant to the Bankruptcy Court's Order Authorizing Settlement Agreement Resolving the United States' Proofs of Claim Regarding Certain Environmental Matters and Grace's confirmed Plan of Reorganization. Upon allowance, Grace shall pay the amount set forth in Appendix D-3 to this Consent Decree within 30 days of the effective date of its confirmed Plan of Reorganization.

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 of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be deemed to be consistent with the NCP and the MCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, 40 C.F.R. § 300.400(e), 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 XVIII (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, provided they have submitted timely and complete applications and taken all other actions necessary to obtain such permits or approvals.

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

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9. Notice to Successors-in-Title.

a. Each Settling Defendant, with respect to any property it owns or controls within the Site following the Effective Date, shall within the later of 15 days after the Effective Date or 15 days after acquiring such ownership or control of the property submit to EPA for review and approval, with a copy to MassDEP, a notice to be recorded with the Middlesex North Registry of Deeds, Commonwealth of Massachusetts, or other appropriate land records office, which shall provide notice to all successors-in-title that: (i) the property is part of the Site; (ii) EPA selected a remedy for the Site on September 27, 2007, following MassDEP's concurrence; (iii) potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy; and (iv) the property is subject to certain obligations to provide access and to restrict its use, pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, including the possible establishment of a grant of environmental restriction and easement ("GERE") affecting all or a portion of the property, pursuant to said Section IX, substantially in the form of Appendix E ("Form of Grant of Environmental Restriction and Easement") of this Consent Decree. Such notice shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. Such Settling Defendant shall record such notice within 10 days of EPA's approval thereof, and shall provide EPA and MassDEP with a certified copy of each such recorded notice within 10 days of recording. Thereafter, any deeds, easements, mortgages, leases, licenses, occupancy agreements, or any other instruments conveying an interest in and/or a right to use the property, or any portion thereof, shall reference the recorded location of such notice.

b. At least 30 days prior to the conveyance of any deeds, easements, mortgages, leases, licenses, occupancy agreements, or any other instruments conveying an interest in and/or a right to use any property located within the Site, or any portion thereof, any Settling Defendant conveying such interest shall give the grantee written notice of this Consent Decree, including the above-described requirements, and shall also give written notice to EPA and MassDEP of the proposed conveyance, including the name and address of the grantee, and the date on which said notice was given to the grantee. If the GERE and/or any other instrument establishing access or imposing restrictions on the property pursuant to this Consent Decree has been recorded at said Registry or other appropriate land records office, the Settling Defendant conveying such interest shall reference such GERE and/or other instrument in all subsequent deeds, easements, mortgages, leases, licenses, occupancy agreements, or any other instruments conveying an interest in and/or a right to use the property, or any portion thereof.

c. In the event of any such conveyance, the Settling Defendant's obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access to the property, and to establish on the property Institutional Controls pursuant to Section IX (Access and Institutional Controls), including satisfaction of all requirements contained therein, shall continue to be met by the Settling Defendant conveying such interest. In no event shall a conveyance of the property, or any interest therein, release or otherwise affect the liability of the Settling Defendant conveying such interest to comply with all provisions of this Consent

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Decree, absent the prior written consent of EPA and MassDEP. If the United States approves, after a reasonable opportunity for review and comment by the Commonwealth, the grantee may perform some or all of the Work under this Consent Decree.

VI. PERFORMANCE OF THE WORK BY PERFORMING SETTling DEFENDANTS

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Performing Settling Defendants pursuant to this Section and Sections 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 Commonwealth. Within 10 days after the lodging of the Consent Decree, Performing Settling Defendants shall notify EPA 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, reissued May 2006) 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 must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the Commonwealth, 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 MassDEP 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 MassDEP 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 Performing Settling Defendants from meeting one or more deadlines in a plan approved by EPA pursuant to this Consent Decree, Performing Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) hereof.

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11. Remedial Design.

a. Within 21 days after EPA's issuance of an authorization to proceed pursuant to Paragraph 10, Performing Settling Defendants shall submit to EPA and MassDEP a Design Schedule, as required by Section 6 of the SOW, attached as Appendix B hereto, for EPA review and approval or modification or disapproval. Performing Settling Defendants shall submit a work plan for the design of the Remedial Action ("Remedial Design Work Plan" or "RD Work Plan") in accordance with the approved Design Schedule. The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD, in accordance with the SOW, and for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree and/or the SOW. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. In accordance with the approved Design Schedule, Performing Settling Defendants shall submit to EPA and MassDEP a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW. In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action Work Plan.

c. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the Commonwealth, and submission of the Health and Safety Plan for all field design activities to EPA and MassDEP, Performing Settling Defendants shall implement the Remedial Design Work Plan. Performing Settling Defendants shall submit to EPA and MassDEP all plans, reports, and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). 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 Plan.

12. Remedial Action.

a. Within 30 days after the approval of the final design submission, Performing Settling Defendants shall submit to EPA and MassDEP a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA, after a reasonable opportunity for review and comment by the Commonwealth. 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 Performing Settling Defendants submit the Remedial Action Work Plan,

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Performing Settling Defendants shall submit to EPA and MassDEP a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements, including, but not limited to, 29 C.F.R. § 1910.120.

b. Upon approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the Commonwealth, Performing Settling Defendants shall implement the activities required under the Remedial Action Work Plan. Performing Settling Defendants shall submit to EPA and MassDEP all plans, reports, 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.

13. 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.

14. Modification of the SOW or Related Work Plans.

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

b. For the purposes of this Paragraph 14 and Paragraphs 52 (Completion of the Remedial Action) and 53 (Completion of the Work) only, the “scope of the remedy selected in the ROD” is: the remedy described in Section L of the ROD, whose major components include but are not limited to: excavation of contaminated soils and sediments above site-specific cleanup levels; consolidation of excavated soils, sediments and debris into the landfills; construction of a low permeability cap over the landfill lobes; interception of groundwater from the southern lobe to prevent it from entering Sutton Brook; a combination of collection and treatment and monitored natural attenuation for contaminated groundwater; institutional controls; and all operation and maintenance, including without limitation long-term monitoring.

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 Paragraph 79 (Record Review) of Section XIX (Dispute Resolution). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

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

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

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

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

(1) 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 Waste Material is to be shipped; (b) the type and quantity of the Waste Material to be shipped; (c) the expected schedule for the shipment of the Waste Material; and (d) the method of transportation. 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 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 Performing Settling Defendants following the award of the contract for Remedial Action construction. Performing Settling Defendants shall provide the information required by Paragraph 16(a) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any Waste Material 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, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Performing Settling Defendants shall only send Waste Material 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

17. Periodic Review. Performing Settling Defendants shall conduct any studies and investigations that EPA requests, after a reasonable opportunity for review and comment by the Commonwealth, in order to permit EPA to conduct reviews of whether the Remedial Action is

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protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations.

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

19. Opportunity To Comment. Performing Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. § 9613(k)(2) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

20. Performing Settling Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, after a reasonable opportunity for review and comment by the Commonwealth, Performing Settling Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 99 or Paragraph 100 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Performing Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination, after a reasonable opportunity for review and comment by the Commonwealth, that the reopener conditions of Paragraph 99 or Paragraph 100 of Section XXI (Covenants Not To Sue by Plaintiffs) are satisfied, (2) EPA's determination, after a reasonable opportunity for review and comment by the Commonwealth, that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection, after a reasonable opportunity for review and comment by the Commonwealth, of the further response actions. Such disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 79 (Record Review) of Section XIX (Dispute Resolution).

21. Submissions of Plans. If Performing Settling Defendants are required to perform the further response actions pursuant to Paragraph 20, they shall submit a plan for such work to EPA and MassDEP 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, after a reasonable opportunity for review and comment by the Commonwealth, in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

22. 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, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by EPA to Performing

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Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Performing Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the Commonwealth, 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, after a reasonable opportunity for review and comment by the Commonwealth, shall be admissible as evidence, without objection, in any proceeding under this Decree. Performing Settling Defendants shall contractually require that EPA and Commonwealth 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 contractually require that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP(s) for quality assurance monitoring. Performing Settling Defendants shall contractually require that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods that are documented in the “Contract Lab Program Statement of Work for Inorganic Analysis” (currently ILM05.3/ILM05.4) and the “Contract Lab Program Statement of Work for Organic Analysis,” dated February 1988 (currently OLM04.3), and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, after a reasonable opportunity for review and comment by the Commonwealth, Performing Settling Defendants may use other analytical methods which are as stringent as or more stringent than the CLP-approved methods. Performing Settling Defendants shall contractually require 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 use only laboratories that have a documented Quality System which 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), and “EPA Requirements for Quality Management Plans (QA/R-2)” (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by EPA, after a reasonable opportunity for review and comment by the Commonwealth. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (“NELAP”) as meeting the Quality System requirements. Performing Settling Defendants shall contractually require 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(s) approved by EPA. Performing Settling Defendants shall diligently enforce the terms of all contracts with any and all laboratories utilized by Performing Settling Defendants in implementing this Consent Decree.

23. Upon request, Performing Settling Defendants shall allow split or duplicate samples to be taken by EPA and MassDEP or their authorized representatives. Performing Settling Defendants shall notify EPA and MassDEP not less than 28 days in advance of any

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sample collection activity unless shorter notice is agreed to by EPA and MassDEP. In addition, EPA and MassDEP, respectively, shall each have the right to take any additional samples that either EPA or MassDEP deems necessary, and upon request, shall provide Performing Settling Defendants with all sampling data generated therefrom. Upon request, EPA and MassDEP shall allow Performing Settling Defendants to take split or duplicate samples of any samples they take as part of Plaintiffs' oversight of Performing Settling Defendants' implementation of the Work.

24. Unless EPA and MassDEP agree in writing to a smaller number or different transmittal method, Performing Settling Defendants shall submit six (6) copies to EPA and two (2) copies to MassDEP 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.

25. Notwithstanding any provision of this Consent Decree, the United States and the Commonwealth hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, Chapter 21C, Chapter 21E and any other applicable Federal or State statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

26. Each Settling Defendant shall, with respect to any property that it owns or controls on or after the date of lodging of this Consent Decree, and where access and/or land/water use restrictions are needed to implement this Consent Decree:

a. commencing on the date of lodging of this Consent Decree, provide the United States, the Commonwealth, and their representatives, including EPA, MassDEP and their respective 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) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States and/or the Commonwealth;
- (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 111 (Work Takeover);

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

c. execute and record, to the extent required under the approved Institutional Control Plan under the SOW, in the Middlesex North Registry of Deeds or Land Registration Office, as applicable, Commonwealth of Massachusetts, a grant of environmental restriction and easement (hereinafter referred to as a "GERE"), the form of which is attached as Appendix E of this Consent Decree, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree, and (ii) grants the right to enforce the land/water use 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 Defendant 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, or (ii) other appropriate grantees as determined by EPA. Such GERE shall be fully assignable, in whole or in part. The Commonwealth, in entering into this Consent Decree, does not agree, either on its behalf or on behalf of MassDEP, and this Consent Decree shall not constitute the Commonwealth's or MassDEP's agreement, to accept such GERE as is described in this Subparagraph 26(c) or an assignment of any such GERE. No grant or assignment of the GERE to MassDEP shall be recorded without MassDEP's prior written acceptance of such grant or assignment, in accordance with the provisions of Section 6 of Chapter 21E, as amended. Notwithstanding any other provision of this Consent Decree, MassDEP fully reserves all rights to condition its acceptance of any grant or assignment of any GERE upon full and complete satisfaction by the grantor or assignor of any requirements for implementing such grant or such assignment, respectively, that MassDEP, in its sole discretion, may deem appropriate. MassDEP shall identify such requirements upon request or at such other time as MassDEP deems appropriate. Any disputes that may arise related to MassDEP's requirements or a determination not to accept a GERE are outside the scope of and do not arise under this Consent Decree. Such Settling Defendant shall, within 60 days after notice from EPA, submit to EPA and MassDEP for review and approval with respect to such property:

(1) a fully executed GERE, in substantially the form of Appendix E hereto, that is enforceable under the laws of the Commonwealth, free and clear of all prior liens

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and encumbrances (except as approved by EPA and MassDEP), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 3111;

(2) a current title commitment or Certification of Title prepared in accordance with the U.S. Department of Justice Title Standards 2001 (the "Standards"); and

(3) any other documents, including but not limited to a Subordination Agreement for any prior liens and encumbrances, and a survey plan, if required by EPA pursuant to CERCLA and/or MassDEP pursuant to M. G. L. c. 21E.

d. Within 15 days of EPA's and MassDEP's approval of the GERE, title commitment or Certification of Title, and other required documents, such Settling Defendant shall update the title commitment or Certification of Title and, if any additional encumbrances have been recorded since the effective date of the title commitment or Certification of Title, the GERE shall not be recorded but such Settling Defendant shall immediately notify EPA and MassDEP and provide a copy of each such encumbrance. If no additional encumbrances have been recorded since the effective date of the title commitment or Certification of Title, or upon receipt from EPA and MassDEP of written approval to proceed, such Settling Defendant shall record and/or register the GERE, the Subordination Agreement(s), if any, and the survey plan with the Middlesex North Registry of Deeds or Land Registration Office, as applicable.

e. Within 30 days of recording and/or registering the GERE, the Subordination Agreement(s), if any, and the survey plan, such Settling Defendant shall submit to EPA and MassDEP:

(1) a certified Registry copy of the GERE and Subordination Agreement(s), if any, bearing the book and page/instrument number and/or document number;

(2) a Registry copy of the required survey plan(s) referenced in the GERE, bearing the plan book/plan number; and

(3) if the property subject to the GERE is unregistered land, a Registry copy of the deed into the owner of the property, bearing the marginal reference required by 310 C.M.R. 40.1071(3)(a).

27. In all appropriate cases, the Town of Tewksbury, a Performing Settling Defendant, has agreed to initiate an action for failure to pay property taxes and complete all necessary steps to take title to all real property in the Town of Tewksbury previously or currently owned or partially owned by Anthony Rocco, Jeannette E. Rocco, Anthony J. Rocco and/or Walter Rocco, or their respective estates ("Rocco Property"), where access and/or land/water use restrictions are needed to implement this Consent Decree, as described in Subparagraph 26(c).

a. As noted in the form GERE attached hereto at Appendix E, the specific terms of said land/water use restrictions, any related permitted uses and activities, and any obligations and conditions to be established in any GERE required pursuant to this Consent Decree shall be determined in accordance with this Consent Decree and the SOW attached hereto as Appendix B.

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b. The Parties note that Subparagraph 26(c) establishes a 60-day time period commencing, with respect to the Town, upon notice from EPA to the Town requiring the Town to comply with Subparagraphs 26(c)(1) through (3). Unless otherwise agreed among EPA, MassDEP and the Town, and provided that the Town is diligently proceeding with the action to take title to the Rocco Property, said 60-day time period shall not commence with respect to the Town unless and until: (i) the Town has completed acquisition of title to the Rocco Property and (ii) all rights of redemption or appeal have been exhausted or, if exercised, only after the Town has successfully defended its title against such rights, provided that the Town diligently defends the same.

28. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by 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 Commonwealth on behalf of MassDEP, 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 26(a);

b. an agreement, enforceable by Performing Settling Defendants, the United States and/or MassDEP, 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; and

c. to the extent required under the approved Institutional Control Plan under the SOW, the execution and recordation in the Middlesex North Registry of Deeds or Land Registration Office, as applicable, Commonwealth of Massachusetts, of a GERE, the form of which is attached as Appendix E of this Consent Decree, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree, and (ii) grants the right to enforce the land/water use 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, or (ii) other appropriate grantees as determined by EPA. Such GERE shall be fully assignable, in whole or in part. The Commonwealth, in entering into this Consent Decree, does not agree, either on its behalf or on behalf of MassDEP, and this Consent Decree shall not constitute the Commonwealth's or MassDEP's agreement, to accept such GERE as is described in this Subparagraph 28(c) or an assignment of any such GERE. No grant or assignment of the GERE to MassDEP shall be recorded without MassDEP's prior written acceptance of such grant or assignment, in accordance with the provisions of Section 6 of Chapter 21E, as amended. Notwithstanding any other provision of this Consent Decree, MassDEP fully reserves all rights to condition its acceptance of any grant or assignment of any GERE upon full and complete

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satisfaction by the grantor or assignor of any requirements for implementing such grant or such assignment, respectively, that MassDEP, in its sole discretion, may deem appropriate. MassDEP shall identify such requirements upon request or at such other time as MassDEP deems appropriate. Any disputes that may arise related to MassDEP's requirements or a determination not to accept a GERE are outside the scope of and do not arise under this Consent Decree. Performing Settling Defendants shall, within 60 days after request by EPA, submit to EPA and MassDEP for review and approval with respect to such property:

(1) a fully executed GERE, in substantially the form of Appendix E hereto, that is enforceable under the laws of the Commonwealth, free and clear of all prior liens and encumbrances (except as approved by EPA and MassDEP), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 3111;

(2) a current title commitment or Certification of Title prepared in accordance with the U.S. Department of Justice Title Standards 2001 (the "Standards"); and

(3) any other documents, including but not limited to a Subordination Agreement for any prior liens and encumbrances, and a survey plan, if required by EPA pursuant to CERCLA and/or MassDEP pursuant to M. G. L. c. 21E.

d. Within 15 days of EPA's and MassDEP's approval of the GERE, title commitment or Certification of Title, and other required documents, the Performing Settling Defendants shall update the title commitment or Certification of Title and, if any additional encumbrances have been recorded since the effective date of the title commitment or Certification of Title, the GERE shall not be recorded but Performing Settling Defendants shall immediately notify EPA and MassDEP and provide a copy of each such encumbrance. If no additional encumbrances have been recorded since the effective date of the title commitment or Certification of Title, or upon receipt from EPA and MassDEP of written approval to proceed, the Performing Settling Defendants shall record and/or register the GERE, the Subordination Agreement(s), if any, and the survey plan with the Middlesex North Registry of Deeds or Land Registration Office, as applicable.

e. Within 30 days of recording and/or registering the GERE, the Subordination Agreement(s), if any, and the survey plan, the Performing Settling Defendants shall submit to EPA and MassDEP:

(1) a certified Registry copy of the GERE and Subordination Agreement(s), if any, bearing the book and page/instrument number and/or document number;

(2) a Registry copy of the required survey plan(s) referenced in the GERE, bearing the plan book/plan number; and

(3) if the property subject to the GERE is unregistered land, a Registry copy of the deed into the owner of the property, bearing the marginal reference required by 310 C.M.R. 40.1071(3)(a).

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29. For purposes of Paragraph 28, “best efforts” includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, and/or the GERE and any other restrictive easements. If any access or land/water use restriction agreements required by Paragraphs 28(a) or 28(b) are not obtained within 45 days of EPA’s request, or such longer reasonable period of time as EPA, after reasonable opportunity for review and comment by MassDEP, approves in writing, or a GERE or any other access easements or restrictive easements required by Paragraph 28(c) are not submitted to EPA in draft form within 60 days of EPA’s request, or such longer reasonable period of time as EPA, after reasonable opportunity for review and comment by MassDEP, approves in writing, Performing Settling Defendants shall promptly notify the United States and MassDEP 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 28. The United States or the Commonwealth may, as either 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. Performing Settling Defendants shall reimburse the United States and/or the Commonwealth, as appropriate, in accordance with the procedures in Section XVI (Payments for Response Costs and Natural Resource Damages), for all costs incurred, direct or indirect, by the United States or the Commonwealth in obtaining such access and/or land/water use restrictions including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

30. If EPA determines that Institutional Controls, including but not limited to land/water use restrictions in the form of State or local laws, regulations, ordinances, or other governmental controls, are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Performing Settling Defendants shall cooperate with EPA’s and/or the Commonwealth’s efforts to secure such governmental controls.

31. Notwithstanding any provision of this Consent Decree, the United States and the Commonwealth 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, Chapter 21E, Chapter 21C, and any other applicable federal or State statute or regulations.

X. REPORTING REQUIREMENTS

32. In addition to any other requirement of this Consent Decree, unless EPA and MassDEP agree in writing to fewer copies or a different transmittal method, Performing Settling Defendants shall submit six (6) copies to EPA, and two (2) printed copies and one (1) electronic copy to MassDEP 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 and all activities planned for the two months following the report; (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

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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 pursuant to Paragraph 14 (Modification of the SOW or Related Work Plans) or Section XI (EPA Approval of Plans and Other Submissions); 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 MassDEP by the tenth day of every month following the selection of the Supervising Contractor until EPA notifies Performing Settling Defendants pursuant to Paragraph 53(b) (Completion of Work) of Section XIV (Certification of Completion), or until such time as EPA, after a reasonable opportunity for review and comment by the Commonwealth, otherwise notifies the Performing Settling Defendants in writing. If requested by EPA or the Commonwealth, Performing Settling Defendants shall also provide briefings for EPA and the Commonwealth to discuss the progress of the Work.

33. Performing Settling Defendants shall notify EPA and MassDEP 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 7 days prior to the performance of the activity.

34. 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, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11004, 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 Planning & Response Branch, Region 1, United States Environmental Protection Agency. The Performing Settling Defendants shall orally notify the MassDEP Project Manager within 24 hours of the onset of any event for which notification to the EPA Project Coordinator is required as stated above. Performing Settling Defendants shall orally notify the MassDEP Project Manager and the EPA Project Coordinator concurrently with any report of any release or threat of a release that meets the criteria set forth in 310 C.M.R. 40.0300 (in addition to notifying the MassDEP Northeast Regional Office of Emergency Response Section in accordance with the requirements of the MCP). These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

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35. Within 20 days of the onset of such an event, as described in the preceding Paragraph, Performing Settling Defendants shall furnish to Plaintiffs a written report, signed by Performing Settling Defendants' Project Coordinator, setting forth the events that 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.

36. Unless EPA and MassDEP agree in writing to fewer copies or a different transmittal method, Performing Settling Defendants shall submit six (6) copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA, in accordance with the schedules set forth in such plans. Performing Settling Defendants shall simultaneously submit two (2) printed copies and one (1) electronic copy of all such plans, reports and data to MassDEP. Upon request by EPA or MassDEP, Performing Settling Defendants shall submit 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.

37. All reports and other documents submitted by Performing Settling Defendants to EPA and/or MassDEP (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 Performing Settling Defendants.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

38. After review of any plan, report or other deliverable which is required to be submitted for approval pursuant to this Consent Decree, EPA, after a reasonable opportunity for review and comment by the Commonwealth, shall: (a) approve, in whole or in part, the deliverable; (b) approve the deliverable upon specified conditions; (c) modify the deliverable to cure the deficiencies; (d) disapprove, in whole or in part, the deliverable; or (e) any combination of the above. However, EPA shall not modify a deliverable without first providing Performing Settling Defendants at least one written notice of deficiency and an opportunity to cure within 7 days, or such longer time period as agreed to by EPA, except where to do so would cause serious disruption to the Work, or where the previous deliverable has been disapproved due to material defects and the deliverable under consideration continues to have the material defect previously identified by EPA.

39. In the event of approval, approval upon conditions, modification, or any combination thereof, by EPA, pursuant to Paragraph 38(a), (b), (c), or (e), Performing Settling Defendants shall proceed to take any action required by the plan, report, or other deliverable, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the deliverable to cure the deficiencies pursuant to Paragraph 38(c) and the deliverable has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

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40. Resubmission of Plans, Reports, and Other Deliverables.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 38(d), Performing Settling Defendants shall, within 7 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Any stipulated penalties applicable to the deliverable, as provided in Section XX (Stipulated Penalties), shall accrue during the 7-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 41 and 42.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 38(d), Performing Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the deliverable. Implementation of any non-deficient portion of a deliverable shall not relieve Performing Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

41. In the event that a resubmitted plan, report or other deliverable, or portion thereof, is disapproved by EPA, EPA, after a reasonable opportunity for review and comment by the Commonwealth, may again require 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 deliverable after a reasonable opportunity for review and comment by the Commonwealth. Performing Settling Defendants shall implement any such plan, report, or deliverable as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute Resolution).

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

43. All plans, reports, and other deliverables required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other deliverable required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

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XII. PROJECT COORDINATORS

44. Within 20 days of lodging this Consent Decree, Performing Settling Defendants, EPA and MassDEP will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. Performing Settling Defendants' Project Coordinator shall be subject to disapproval by EPA, after a reasonable opportunity for review and comment by the Commonwealth, and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. 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.

45. Plaintiffs may designate other representatives, including, but not limited to, EPA and Commonwealth 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 NCP, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the NCP, to halt any Work required by this Consent Decree and to take any necessary response action when he or she 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 the release or threatened release of Waste Material.

46. EPA's Project Coordinator and Performing Settling Defendants' Project Coordinator will meet, at a minimum, on a monthly basis. Performing Settling Defendants' Project Coordinator shall provide MassDEP's Project Coordinator with reasonable advance notice of all such meetings. MassDEP's Project Coordinator shall have the right to fully participate in all such meetings.

XIII. PERFORMANCE GUARANTEE

47. In order to ensure the full and final completion of the Work, Performing Settling Defendants shall establish and maintain a Performance Guarantee for the benefit of EPA in the amount of \$29,980,000 (hereinafter "Estimated Cost of the Work"). The Performance Guarantee, which must be satisfactory in form and substance to EPA, shall be in one or more of the following mechanisms (provided that, if Performing Settling Defendants intend to use multiple mechanisms, such multiple mechanisms shall be limited to trust funds, surety bonds guaranteeing payment, letters of credit, insurance policies, and the financial test by a Performing Settling Defendant that is a local government or other political subdivision of the State):

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- a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;
- b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s): (i) that has the authority to issue letters of credit; and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;
- c. A trust fund established for the benefit of EPA, which may be funded with cash and/or letters of credit, that is administered by a trustee that has the authority to act as a trustee;
- d. A policy of insurance that: (i) provides EPA with acceptable rights as a beneficiary thereof; and (ii) is issued by an insurance carrier (a) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (b) whose insurance operations are regulated and examined by a State agency;
- e. A demonstration by a Performing Settling Defendant that is a local government or other political subdivision of the State, that such Performing Settling Defendant satisfies the requirements in Appendix F-3;
- f. A demonstration by one or more Performing Settling Defendants that each such Performing Settling Defendant meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied;
- g. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of a Performing Settling Defendant; or (ii) a company that has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with at least one Performing Settling Defendant; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder; or
- h. Such other form as EPA, in its sole and unreviewable discretion, may approve in writing.

Performing Settling Defendants have selected, and EPA has approved, as an initial Performance Guarantee a demonstration by the Town pursuant to the requirements of Paragraph 47(e) and Appendix F-3 to address \$6.5 million of their obligation hereunder, and two trusts pursuant to Paragraph 47(c), attached hereto as Appendices F-1 and F-2 (the Sutton Brook Disposal Area Superfund Site De Minimis Settlement Trust Agreement and the Sutton Brook Disposal Area Superfund Site Settlement Trust Agreement), to address remaining obligations under this Section. Within 10 days after the Effective Date, Performing Settling Defendants shall execute or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents

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attached hereto as Appendix F, and such Performance Guarantee(s) shall thereupon be fully effective. Within 30 days of the Effective Date, 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 in accordance with Section XXVI (Notices and Submissions), and to the United States, EPA and MassDEP as specified in Section XXVI (Notices and Submissions).

48. If at any time during the effective period of this Consent Decree, Performing Settling Defendants provide a Performance Guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraphs 47(f) or 47(g), the relevant Performing Settling Defendants shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods, unless otherwise provided in this Consent Decree, including but not limited to: (i) the initial submission to EPA, with a copy to MassDEP, of required financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant; (ii) the annual re-submission to EPA, with a copy to MassDEP, of such reports and statements within 90 days after the close of each such entity's fiscal year; and (iii) the notification of EPA, with a copy to MassDEP, within 90 days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of the Performance Guarantee methods specified in this Section XIII, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to refer to the Work required under this Consent Decree, and the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to refer to the Estimated Cost of the Work.

49. In the event that EPA determines at any time that a Performance Guarantee provided by any Performing Settling Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that any Performing Settling Defendant becomes aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Performing Settling Defendants, within 30 days of receipt of notice of EPA's determination or, as the case may be, within 30 days of any Performing Settling Defendant becoming aware of such information, shall obtain and present to EPA for approval, with a copy to MassDEP, a proposal for a revised or alternative form of Performance Guarantee listed in Paragraph 47 that satisfies all requirements set forth in this Section XIII. In seeking approval for a revised or alternative form of Performance Guarantee, Performing Settling Defendants shall follow the procedures set forth in Paragraph 51(b)(2). Performing Settling Defendants' inability to post a Performance Guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Performing Settling Defendants to complete the Work in strict accordance with the terms hereof.

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50. The commencement of any Work Takeover pursuant to Paragraph 111 shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to Paragraphs 47(a), 47(b), 47(c), 47(d), 47(g) or 47(h), 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. EPA shall also have the right to direct payment of such resources, or a portion of such resources, to MassDEP or the benefit of MassDEP for the performance of the Work, as agreed by EPA and MassDEP under appropriate circumstances. If for any reason EPA is unable to promptly secure the resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or in the event that the Performance Guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 47(e) or 47(f), 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.

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

a. Reduction of Amount of Performance Guarantee. If Performing Settling Defendants believe that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 47, Performing Settling Defendants may, on any anniversary of the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing, with a copy to MassDEP, 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, with a copy to MassDEP, 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 51(b)(2). If EPA decides to accept such a proposal, EPA shall notify the petitioning Performing Settling Defendants of such decision in writing, with a copy to MassDEP. 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 pursuant to Section XIX (Dispute Resolution). No change to the form or terms of any Performance Guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 49 or 51(b).

b. Change of Form of Performance Guarantee.

(1) If, after the Effective Date, Performing Settling Defendants desire to change the form or terms of any Performance Guarantee(s) provided pursuant to this Section,

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Performing Settling Defendants may, on any anniversary of the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing, with a copy to MassDEP, 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 51(b)(2). Any decision made by EPA on a petition submitted under this Paragraph shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by 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 in accordance with Section XXVI (Notices and Submissions). EPA shall notify Performing Settling Defendants in writing, with a copy to MassDEP, of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this Paragraph. Within 10 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 30 days of receiving a written decision approving the proposed revised or alternative Performance Guarantee in accordance with Section XXVI (Notices and Submissions) and to the United States, EPA and MassDEP as specified in Section XXVI (Notices and Submissions).

c. Release of Performance Guarantee. If Performing Settling Defendants receive written notice from EPA in accordance with Paragraph 53 that the Work has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies Performing Settling Defendants in writing, with a copy to MassDEP, 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

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administrative or judicial decision resolving such dispute pursuant to Section XIX (Dispute Resolution).

XIV. CERTIFICATION OF COMPLETION

52. 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, Performing Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Performing Settling Defendants, EPA, and MassDEP. If, after the pre-certification inspection, 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 MassDEP, 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 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 registered in the Commonwealth. The report shall contain the following statement, signed by a responsible corporate official of a Performing Settling Defendant or Performing Settling Defendants' Project Coordinator:

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity for review and comment by the Commonwealth, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA, after a reasonable opportunity for review and comment by the Commonwealth, will notify Performing Settling Defendants in writing, with a copy to MassDEP, 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 ROD," as that term is defined in Paragraph 14(b). EPA, after a reasonable opportunity for review and comment by the Commonwealth, will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require Performing Settling Defendants to submit a schedule to EPA, with a copy to MassDEP, 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

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specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

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

53. 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) that arise after completion of the O & M), have been fully performed, Performing Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Performing Settling Defendants, EPA and MassDEP. If, after the pre-certification inspection, Performing Settling Defendants still believe that the Work has been fully performed, Performing Settling Defendants shall submit to EPA, with a copy to the Commonwealth, a written report by a professional engineer registered in the Commonwealth 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 Performing Settling Defendants' Project Coordinator:

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

If, after review of the written report, EPA, after reasonable opportunity for review and comment by the Commonwealth, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA, after reasonable opportunity for review and comment by the Commonwealth, will notify Performing Settling Defendants in writing, with a copy to MassDEP, 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 ROD," as that term is defined in Paragraph 14(b). EPA, after a reasonable opportunity for review and comment by the Commonwealth, will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require 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,

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subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

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

XV. EMERGENCY RESPONSE

54. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Performing Settling Defendants shall, subject to Paragraph 55, 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, Performing Settling Defendants shall notify the EPA Emergency Planning & Response Branch, Region 1. In such an event, Performing Settling Defendants shall also immediately notify MassDEP's Project Coordinator, or if the MassDEP's Project Coordinator is unavailable, MassDEP's Alternate Project Coordinator, and the MassDEP Northeast Regional Office of the Emergency Response Section. Such notification is in addition to any other notification requirements under M. G. L. c. 21E and the MCP. 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 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 Commonwealth, take such action instead, Performing Settling Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP and shall reimburse the Commonwealth all costs of the response action not inconsistent with the NCP or the MCP, pursuant to Section XVI (Payments for Response Costs and Natural Resource Damages).

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

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XVI. PAYMENTS FOR RESPONSE COSTS AND NATURAL RESOURCE DAMAGES

56. Payments by the Town. As part of its obligations under the Consent Decree, the Town shall contribute to the Trust as specified in Appendix D-4 to this Consent Decree. To the extent that Appendix D-4 permits any in-kind contribution that is within the definition of Work, its inclusion in Appendix D-4 does not excuse any Performing Settling Defendant's joint and several liability to perform such part of the Work.

57. Payments by Cashout Settling Defendants. Within 30 days of the Effective Date, each Cashout Settling Defendant shall pay or cause to be paid to the Trust the amount specified for that Cashout Settling Defendant in Appendix D-2 to this Consent Decree. Each Cashout Settling Defendant's full settlement amount shall be deposited into the Trust by Electronic Funds Transfer in accordance with instructions provided by Performing Settling Defendants after the Effective Date. At the time of payment into the Trust, each Cashout Settling Defendant shall send or cause to be sent, to the United States and to the Commonwealth, notice evidencing that payment has been made into the Trust in accordance with Section XXVI (Notices and Submissions). The funds contributed to the Trust by or for the Cashout Settling Defendants pursuant to this Paragraph shall be used by Performing Settling Defendants to fund the Work. A portion of the funds contributed to the Trust by the Cashout Settling Defendants pursuant to this Paragraph may also be used by Performing Settling Defendants to make their payments for Oversight Costs, United States Future Response Costs, State Past Response Costs, State Future Response Costs and Natural Resource Damages.

58. Payments by De Minimis Settling Defendants. EPA has determined the following:

a. prompt settlement with each De Minimis Settling Defendant is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1);

b. the payment to be made by each De Minimis Settling Defendant under this Consent Decree involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1); and

c. the amount of hazardous substances contributed to the Site by each De Minimis Settling Defendant and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each De Minimis Settling Defendant are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A). Each De Minimis Settling Defendant contributed wastes in amounts not exceeding 3% of the total volume of similar wastes contributed by Settling Defendants to the Site, and the hazardous substances contributed by each De Minimis Settling Defendant to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

Within 30 days of the Effective Date, each De Minimis Settling Defendant shall pay or cause to be paid to the De Minimis Trust the amount specified for that De Minimis Settling Defendant in Appendix D-3 to this Consent Decree. Each De Minimis Settling Defendant's full settlement amount shall be deposited into the De Minimis Trust by Electronic Funds Transfer in accordance

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with instructions provided by Performing Settling Defendants after the Effective Date. At the time of payment into the De Minimis Trust, each De Minimis Settling Defendant shall send or cause to be sent, to the United States and to the Commonwealth, notice evidencing that payment has been made in accordance with Section XXVI (Notices and Submissions). The funds contributed to the De Minimis Trust by the De Minimis Settling Defendants pursuant to this Paragraph shall be used by Performing Settling Defendants to fund the Work. A portion of the funds contributed to the De Minimis Trust by or for the De Minimis Settling Defendants pursuant to this Paragraph may also be used by Performing Settling Defendants to make their payments for Oversight Costs, United States Future Response Costs, State Past Response Costs, State Future Response Costs and Natural Resource Damages.

59. Payment by Performing Settling Defendants for Natural Resource Damages. Within 30 days of the Effective Date, Performing Settling Defendants shall pay \$1,650,000 to the NR Trustees for Natural Resource Damages as follows:

a. Within 30 days of the Effective Date, Performing Settling Defendants shall pay, in the manner set forth in Subparagraphs 59(b) and 59(c), a total of \$825,000 as a one time payment, plus Interest, if any, as provided in Paragraph 66, to the NR Trustees to reimburse costs incurred and to be incurred by the NR Trustees in assessing the damages to natural resources at the Site and to plan and implement projects to restore, replace, or acquire the equivalent of natural resources injured by the release of hazardous substances at or from the Site.

b. Within 30 days of the Effective Date, Performing Settling Defendants shall pay \$62,752 to DOI plus Interest if any as provided in Paragraph 66, to DOI as reimbursement of DOI's Costs of Assessment. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing the civil action number and DOJ Case Number 90-11-2-07854/2, and NRDAR Account Number 14X5198. Payment shall be made in accordance with instructions provided to the Performing Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of Massachusetts. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Performing Settling Defendants shall send notice that such payment has been made to the persons listed in Section XXVI (Notices and Submissions) for notice to the United States, and to Bruce Nesslage, Natural Resource Damage Assessment and Restoration Program, 1849 C Street, NW, Mailstop 4449, Washington, D.C. 20240. The notice shall state that the payment is for reimbursement of Costs of Assessment for natural resource damage assessment with respect to the Sutton Brook Disposal Area Superfund Site in Massachusetts, and include the DOJ Case Number 90-11-2-07854/2, and the names of the Performing Settling Defendants making the payment.

c. Within 30 days of the Effective Date, Performing Settling Defendants shall pay \$762,248, plus Interest if any as provided in Paragraph 66, to DOI, on behalf of the NR Trustees, for Natural Resource Damages. Payment shall be made using the U.S. Treasury's Remittance Express program, or, in the event said program is not available to Performing Settling Defendants, then by Fedwire EFT in accordance with instructions provided to the Performing Settling Defendants by the Department of the Interior. Any payments received after 4:00 P.M. (Eastern Time) will be credited on the next business day. Performing Settling

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Defendants shall send notice that such payment has been made to the persons listed in Section XXVI (Notices and Submissions) for notice to the United States, and to Bruce Nesslage, Natural Resource Damage Assessment and Restoration Program, 1849 C Street, NW, Mailstop 4449, Washington, D.C. 20240. The notice shall state that the payment is for Natural Resource Damages under the trusteeship of DOI and EEA with respect to the Sutton Brook Disposal Area Superfund Site in Massachusetts, and include the DOJ Case Number 90-11-2-07854/2, reference Account Number 14X5198 (NRDAR), and the names of the Performing Settling Defendants making the payment.

d. The jurisdiction, trusteeships, and restoration goals of DOI and EEA as NR Trustees over the injured natural resources overlap. Accordingly, the monies paid pursuant to Subparagraph 59(c) shall be held by DOI in its Natural Resource Damage Assessment and Restoration Fund, and said monies shall only be spent for restoration, including restoration planning, oversight, monitoring, and other allowable expenditures associated with natural resource injuries associated with the Site.

e. All expenditures, disbursements, or other dispositions of the monies received as payments pursuant to Subparagraph 59(c) together with all Interest accrued thereon, if any, shall be expended pursuant to the terms of the Memorandum of Agreement (“MOA”) to be entered into among DOI, and EEA, which MOA will require decisions by the Trustees to be unanimous.

f. Within 30 days of the Effective Date of this Consent Decree, Performing Settling Defendants shall pay \$825,000 by certified check payable to the Commonwealth of Massachusetts, with a reference to Natural Resource Damages Trust - Account 2000-6020, for Natural Resource Damages relating to contaminated groundwater related to the Site as alleged in the State’s complaint. Payment shall be sent to:

Executive Office of Energy and Environmental Affairs
Attn: Chief Financial Officer
100 Cambridge Street, Suite 900
Boston, MA 02114

Copies of the check shall be sent to:

MA Executive Office of Energy and Environmental Affairs
NRD Program
100 Cambridge Street
Suite 900
Boston, MA 02114 (Attn: Dale Young)

Office of the Attorney General
Environmental Protection Division
One Ashburton Place
Boston, MA 02108 (Attn: Matthew Brock)

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The payment under this Subparagraph shall be allocated as follows:

\$44,270.35 of the amount paid to the Commonwealth to be deposited into the Natural Resource Damages Trust - Account 2000-6020 on account of NRD assessment costs incurred by the Commonwealth in connection with the Site. This payment shall be deposited into this account and expended by the Commonwealth Trustee in accordance with its requirements as established under 1998 Mass. Acts ch. 194, sec. 317, as amended by 2004 Mass. Acts ch. 149, sec. 222.

\$780,729.65 of the amount paid to the Commonwealth to be deposited into the Natural Resource Damages Trust - Account 2000-6020, and shall be managed by the Commonwealth Trustee and used for restoration, replacement, or acquisition of the equivalent of injured natural resources in connection with the Site in accordance with Chapter 21E and the requirements as established under 1998 Mass Acts ch. 194, sec. 317, as amended by 2004 Mass. Acts ch. 149, sec. 222.

60. Payments by Performing Settling Defendants for State Past Response Costs.

Within 30 days of the Effective Date, Performing Settling Defendants shall pay to the Commonwealth Five Hundred Twelve Thousand Dollars (\$512,000) in reimbursement of the State Past Response Costs in the form of a certified or cashier's check or checks made payable to the "Commonwealth of Massachusetts" and referencing Sutton Brook Disposal Area Superfund Site. Performing Settling Defendants shall deliver such certified or cashier's check(s) to the attention of: Chief, Environmental Protection Division, Office of the Attorney General, One Ashburton Place, Room 1813, Boston, MA 02108. Performing Settling Defendants shall also send copies of such check(s) and transmittal letter to Mark Collins, Branch Chief, Cost Recovery, Fees and Revenue Section, Bureau of Waste Site Cleanup, Department of Environmental Protection, One Winter Street, Boston, MA 02108, and to the Commonwealth as specified in Section XXVI (Notices and Submissions).

61. Payments by Performing Settling Defendants for United States Future Response Costs.

a. Performing Settling Defendants shall pay to EPA all United States Future Response Costs not inconsistent with the NCP. On a periodic basis, the United States will send Performing Settling Defendants a bill requiring payment that includes an itemized cost summary. The itemized cost summary will distinguish between United States Future Response Costs and Oversight Costs. Performing Settling Defendants shall make all payments within 30 days of Performing Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 65, in accordance with Paragraphs 64(a) and 64(b) (Payment Instructions).

b. The total amount to be paid by Performing Settling Defendants pursuant to Paragraph 61(a) shall be deposited by EPA in the Sutton Brook Disposal Area Superfund Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

62. Payments by Performing Settling Defendants for State Future Response Costs.

Performing Settling Defendants shall pay to the Commonwealth all State Future Response Costs not inconsistent with the NCP or MCP. On a periodic basis the Commonwealth will send to the

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Performing Settling Defendants a bill requiring payment of such State Future Response Costs, which includes an itemized cost summary. The itemized cost summary will distinguish between State Future Response Costs and Oversight Costs. The Performing Settling Defendants shall make all payments within 30 days of the Performing Settling Defendants' receipt of each bill for State Future Response Costs, except as otherwise provided in Paragraph 65. The Performing Settling Defendants shall make all payments to the Commonwealth required by this Paragraph in the manner described in Paragraph 60.

63. Payments by Performing Settling Defendants for Oversight Costs. Performing Settling Defendants shall pay Oversight Costs, with respect to the United States not inconsistent with the NCP, and with respect to the Commonwealth not inconsistent with the NCP or the MCP, to the United States and the Commonwealth in a combined total amount that does not exceed the greater of: (1) \$4,500,000 (plus an additional \$1,050,000 if EPA determines that implementation of the Contingent Remedy is necessary, pursuant to Section 7.12 of the SOW), or (2) 15% of the total costs that Performing Settling Defendants incur in performing the Work. On a periodic basis, the United States and the Commonwealth will each send Performing Settling Defendants a bill requiring payment of their respective Oversight Costs that includes an itemized cost summary. The itemized cost summary will distinguish between United States Future Response Costs, State Future Response Costs and Oversight Costs. Performing Settling Defendants shall make all payments within 30 days of Performing Settling Defendants' receipt of each bill, except as otherwise provided in Paragraph 65, in accordance with Paragraphs 64(a) and 64(b), or in the manner described in Paragraph 60, as appropriate.

64. Payment Instructions for United States Future Response Costs and Oversight Costs.

a. All payments required to be made in accordance with this Paragraph shall be made by official bank checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Number 01-6U, and DOJ Case Number 90-11-2-07854/1. 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)

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

In the alternative, Performing Settling Defendants may make the payments required by this Paragraph through a wire transfer. Wire transfers shall reference the name and address of the

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party making the payment, EPA Site/Spill ID Number 01-6U and DOJ Case Number 90-11-2-07854/1, and shall be directed to:

Federal Reserve Bank of New York
33 Liberty Street
New York, NY 10045
ABA = 021030004
Account = 68010727
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

b. At the time of any payment required to be made in accordance with Paragraph 64, 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 XXVI (Notices and Submissions), and to the EPA Cincinnati Finance Office by mail at 26 Martin Luther King Drive, Cincinnati, Ohio 45268.

65. Performing Settling Defendants may contest any Oversight Costs, United States Future Response Costs or State Future Response Costs billed under Paragraphs 61, 62 or 63 if they determine that the United States or the Commonwealth has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP, or in the case of the Commonwealth, inconsistent with both the NCP and the MCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or the Commonwealth (if the Commonwealth's accounting is being disputed) pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Oversight Costs, United States Future Response Costs or State Future Response Costs and the basis for objection. In the event of an objection, Performing Settling Defendants shall within the 30-day period (i) pay to the United States all uncontested Oversight Costs billed by the United States and all uncontested United States Future Response Costs and (ii) pay to the Commonwealth all uncontested Oversight Costs billed by the Commonwealth and all uncontested State Future Response Costs; each in the manner described in Paragraph 61, 62 or 63, as appropriate. Simultaneously, Performing Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the Commonwealth and remit to that escrow account funds equivalent to the amount of the contested Oversight Costs, United States Future Response Costs or State Future Response Costs. Performing Settling Defendants shall send to the United States and the Commonwealth, as provided in Section XXVI (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Oversight Costs, United States 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, Performing Settling Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States or the Commonwealth prevails in the dispute, within 5 days of the resolution of the dispute, Performing Settling Defendants shall pay the sums due (with accrued interest) to

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the United States, or to the Commonwealth, if the Commonwealth's costs are disputed, in the manner described in Paragraph 61, 62 or 63. If Performing Settling Defendants prevail concerning any aspect of the contested costs, 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 to the Commonwealth, if the Commonwealth's costs are disputed, in the manner described in Paragraph 61, 62 or 63. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Performing Settling Defendants' obligation to reimburse the United States or the Commonwealth for Oversight Costs, United States Future Response Costs and State Future Response Costs.

66. In the event that any payment for Oversight Costs, United States Future Response Costs, State Past Response Costs, State Future Response Costs or Natural Resource Damages required under this Section is not made by the date required, Performing Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid on Natural Resource Damages and State Past Response Costs shall begin to accrue on the Effective Date. The Interest on all Oversight Costs, United States Future Response Costs and State Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Performing Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Performing Settling Defendants' failure to make timely payments under this Section, including, but not limited to, payment of stipulated penalties.

67. If any De Minimis Settling Defendant fails to make its full payment within the time required by Paragraph 58, or such other schedule approved in writing by EPA and the Commonwealth, that De Minimis Settling Defendant shall pay Interest on the unpaid balance. In addition, if any De Minimis Settling Defendant fails to make full payment as required by Paragraph 58, the United States or the Commonwealth may, in addition to any other available remedies or sanctions, bring an action against that De Minimis Settling Defendant seeking injunctive relief to compel payment and/or, for the United States, seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), for failure to make timely payment.

68. If any Cashout Settling Defendant fails to make its full payment within the time required by Paragraph 57, or such other schedule approved in writing by EPA and the Commonwealth, that Cashout Settling Defendant shall pay Interest on the unpaid balance. In addition, if any Cashout Settling Defendant fails to make full payment as required by Paragraph 57, the United States or the Commonwealth may, in addition to any other available remedies or sanctions, bring an action against that Cashout Settling Defendant seeking injunctive relief to compel payment and/or, for the United States, seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), for failure to make timely payment.

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XVII. INDEMNIFICATION AND INSURANCE

69. Performing Settling Defendants' Indemnification of the United States and the Commonwealth.

a. The United States and the Commonwealth do not assume any liability by entering into this Consent Decree or by virtue of any designation of Performing Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Performing Settling Defendants shall indemnify, save and hold harmless the United States and the Commonwealth and their respective 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, Performing Settling Defendants agree to pay the United States and the Commonwealth all costs they incur, including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the Commonwealth based on negligent or other wrongful acts or omissions of 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 Commonwealth 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 Performing Settling Defendants nor any such contractor shall be considered an agent of the United States or the Commonwealth.

b. The United States and the Commonwealth shall give Performing Settling Defendants notice of any claim for which the United States or the Commonwealth plans to seek indemnification pursuant to this Paragraph, and shall consult with Performing Settling Defendants prior to settling such claim.

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

71. No later than 30 days before commencing any on-site Work, Performing Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of

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Completion of the Remedial Action pursuant to Paragraph 52(b) of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of three million dollars, combined single limit, and automobile liability insurance with limits of three million dollars, combined single limit, naming the United States and the Commonwealth as additional insureds. 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 MassDEP 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 MassDEP 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 that is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

72. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of 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 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.

73. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Performing 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 and Restoration, EPA Region 1, within 24 hours of when Performing Settling Defendants first knew that the event might cause a delay. For any event for which notification to the EPA Project Manager is required, as stated above, Performing Settling Defendants shall also orally notify the MassDEP Project Manager within 24 hours of when Performing Settling Defendants first knew that such event might cause a delay. Within 7 days thereafter, Performing Settling Defendants shall provide in writing to EPA and MassDEP an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Performing Settling Defendants' rationale for

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attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of Performing Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. 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 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.

74. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by the Commonwealth, 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 Commonwealth, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Performing Settling Defendants in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, agrees that the delay is attributable to a force majeure event, EPA will notify Performing Settling Defendants in writing, with a copy to MassDEP, of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

75. If Performing Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, 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 event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Performing Settling Defendants complied with the requirements of Paragraphs 72 and 73. If Performing Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Performing Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

76. 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 Settling Defendants or the Commonwealth and Settling Defendants arising under or with respect to this Consent Decree. The procedures for resolution of disputes which involve EPA are governed by Paragraphs 77 through 81. The Commonwealth may participate in such dispute resolution proceedings to the extent specified in Paragraphs 77 through 81.

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Disputes exclusively between the Commonwealth and Settling Defendants are governed by this Paragraph and Paragraph 82. However, the procedures set forth in this Section shall not apply to actions by the United States or the Commonwealth to enforce obligations of Settling Defendants that have not been disputed in accordance with this Section.

77. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. The parties shall concurrently provide a copy of any Notice of Dispute to the Commonwealth.

78. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA, after a reasonable opportunity for review and comment by the Commonwealth, shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States and the Commonwealth a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Settling Defendants. The Statement of Position shall specify Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 79 or Paragraph 80.

b. Within 21 days after receipt of Settling Defendants' Statement of Position, EPA, after a reasonable opportunity for review and comment by the Commonwealth, will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. The Commonwealth, after reasonable opportunity for review and comment by EPA, may also serve a Statement of Position within the 21-day time limit set forth above in this Paragraph and shall provide the Settling Defendants with a copy of its Statement. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 79 or 80. Within 14 days after receipt of EPA's Statement of Position and within 14 days after receipt of any Statement of Position submitted by the Commonwealth, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and Settling Defendants as to whether dispute resolution should proceed under Paragraph 79 or 80, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if 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 79 and 80.

79. Record Review. 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

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adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions.

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 Settling Defendants, EPA or the Commonwealth.

b. The Director of the Office of Site Remediation and Restoration, EPA Region 1, after a reasonable opportunity for review and comment by the Commonwealth, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 79(a). This decision shall be binding upon Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraphs 79(c) and 79(d).

c. Any administrative decision made by EPA pursuant to Paragraph 79(b) shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Office of Site Remediation and Restoration Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 79(a).

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

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 78, after a reasonable opportunity for review and comment by the Commonwealth, the Office of Site Remediation and Restoration Director, EPA Region 1, will issue a final decision resolving the dispute. The Office of Site Remediation and Restoration Director's decision shall be binding on Settling Defendants unless, within 10 days of receipt of the decision, 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 Settling Defendants' motion.

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

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81. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Settling Defendants under this Consent Decree, not directly in dispute, unless EPA, after a reasonable opportunity for review and comment by the Commonwealth, 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 Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

82. Disputes Solely Between the Commonwealth and Settling Defendants. Disputes arising under the Consent Decree between the Commonwealth and Settling Defendants that relate to: (1) the amount and/or payment of Oversight Costs, State Past Response Costs or State Future Response Costs owed to the Commonwealth, (2) assessment of stipulated penalties by the Commonwealth, (3) the adequacy of and/or compliance with access and Institutional Controls in which MassDEP holds a real property interest, or (4) the adequacy of and/or compliance with the inspection and monitoring requirements established pursuant to the SOW relative to any Institutional Controls in which the MassDEP holds a real property interest, 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 77 through 81, except that each reference to EPA shall read as a reference to MassDEP, each reference to the Director of the Office of Site Remediation & Restoration, EPA Region 1, shall be read as a reference to the Assistant Commissioner for the Bureau of Waste Site Cleanup of the MassDEP, and each reference to the United States shall be read as a reference to the Commonwealth.

XX. STIPULATED PENALTIES

83. Settling Defendants' Liability for Stipulated Penalties. The Performing Settling Defendants, and each Cashout Settling Defendant or De Minimis Settling Defendant, as appropriate, shall be liable for stipulated penalties in the amounts set forth in Paragraphs 85, 86, and 87 to the United States and the Commonwealth for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). "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 identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA, and any plans or other documents approved by MassDEP in the case of any Institutional Controls for which MassDEP is a grantee of a real property interest, pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

84. a. Except as provided in Subparagraph 84(b), the Performing Settling Defendants, and each Cashout Settling Defendant or De Minimis Settling Defendant, as appropriate, shall pay 90% of stipulated penalties to the United States and shall pay 10% of stipulated penalties to the Commonwealth. However, except as provided in Subparagraph 84(b), when stipulated penalties are assessed by EPA for noncompliance with Institutional Controls requirements under the Remedial Design and/or the Remedial Action in the SOW, the

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Performing Settling Defendants shall pay 50% of stipulated penalties to the Commonwealth and 50% of stipulated penalties to the United States.

b. Performing Settling Defendants, and each Cashout Settling Defendant and each De Minimis Settling Defendant, as appropriate, shall pay 90% of stipulated penalties to the Commonwealth and 10% of stipulated penalties to the United States when MassDEP has assessed stipulated penalties for failure to make the payments required by Section XVI (Payments for Response Costs and Natural Resource Damages), as set forth in Paragraph 89(a), or when MassDEP has assessed stipulated penalties for one of the six reasons set forth in Paragraph 89(b). With respect to the assessment of stipulated penalties for failure to make payments for Natural Resource Damages, Performing Settling Defendants shall pay 50% of stipulated penalties to United States and 50% of stipulated penalties to the Commonwealth for failure to make payments required by Paragraph 59(a), and 100% of stipulated penalties to the Commonwealth for failure to make payments required by Paragraph 59(f).

85. Stipulated Penalty Amounts - Failure to Pay Response Costs; Natural Resource Damages; Work.

a. The following stipulated penalties shall be payable per violation per day for any noncompliance except those identified in Paragraphs 86 and 87:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 2,500	1st through 14th day
\$ 5,000	15th through 30th day
\$ 10,000	31st day and beyond

86. Stipulated Penalty Amounts - Reports.

a. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Sections X (Reporting Requirements) and XI (EPA Approval of Plans and Other Submissions):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1st through 14th day
\$ 1000	15th through 30th day
\$ 2500	31st day and beyond

87. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 111 (Work Takeover) of Section XXI (Covenants Not to Sue by Plaintiffs), Performing Settling Defendants shall be liable for a stipulated penalty in the following amounts:

a. Performing Settling Defendants shall pay a stipulated penalty of \$1,000,000 if EPA assumes performance of a portion or all of the Work prior to Performing Settling Defendants' completion of the construction of the landfill caps for the Northern and Southern Lobes;

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b. Performing Settling Defendants shall pay a stipulated penalty of \$500,000 if EPA assumes performance of a portion or all of the Work after Performing Settling Defendants' completion of the construction of the landfill caps for the Northern and Southern Lobes.

88. All stipulated penalties under this Section shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Performing Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Office of Site Remediation and Restoration, EPA Region 1, under Paragraph 79(b) or 80(a) of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Performing Settling Defendants' reply to EPA's, or as the case may be, MassDEP's, Statement of Position is received until the date that the Director or Assistant Commissioner issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

89. a. Following EPA's or the Commonwealth's determination, after a reasonable opportunity for review and comment by the other agency, that the Performing Settling Defendants, or with respect to any individual payment obligation, any Cashout Settling Defendant or any De Minimis Settling Defendant, as appropriate, have failed to make the payments required by Section XVI (Payments for Response Costs and Natural Resource Damages), EPA or the Commonwealth may give the Performing Settling Defendants, or such Cashout Settling Defendant or De Minimis Settling Defendant, written notification of the same and describe the noncompliance. EPA or the Commonwealth may send the Performing Settling Defendants, or such Cashout Settling Defendant or De Minimis Settling Defendant, a written demand for payment of the penalties. Following DOI's or EEA's determination that the Performing Settling Defendants have failed to make the payments required by Paragraph 59, DOI or EEA may give the Performing Settling Defendants written notification of the same and describe the noncompliance, and DOI or EEA may send the Performing Settling Defendants a written demand for payment of the penalties. However, penalties shall accrue as provided in Paragraph 85 regardless of whether EPA or the Commonwealth has notified Performing Settling Defendants, or such Cashout Settling Defendant or De Minimis Settling Defendant, of a violation.

b. Following EPA's determination, after a reasonable opportunity for review and comment by the Commonwealth, that the Performing Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give the Performing Settling Defendants written notification of the same and describe the noncompliance. Following MassDEP's determination that the Performing Settling Defendants have: (1) failed to pay

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Oversight Costs, State Past Response Costs or State Future Response Costs to the Commonwealth as required by Section XVI (Payments for Response Costs and Natural Resource Damages), (2) failed to provide the Commonwealth or MassDEP with any written or oral notice in accordance with the requirements of this Consent Decree, (3) failed to provide the Commonwealth or MassDEP any report or other document in accordance with the requirements of this Consent Decree, (4) failed to comply with the access requirements established pursuant to this Consent Decree, (5) failed to comply with the terms of any Institutional Controls established pursuant to this Consent Decree for which MassDEP, at the time of such violation, is the holder of any real property interest therein, or (6) fails to perform the inspection and monitoring requirements established pursuant to the SOW relative to any Institutional Controls in which MassDEP holds a real property interest, MassDEP may give the Performing Settling Defendants written notification of the same and describe the noncompliance. EPA, or the Commonwealth for the items set forth in this Paragraph only, may send the Performing Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in Paragraph 88 regardless of whether EPA, or the Commonwealth for the items set forth in this Paragraph, has notified the Performing Settling Defendants of a violation.

90. All penalties accruing to the United States and/or the Commonwealth under this Section shall be due and payable to the United States and/or the Commonwealth within 30 days of receipt by Performing Settling Defendants, a Cashout Settling Defendant or a De Minimis Settling Defendant, as appropriate, of a demand from EPA, DOI, MassDEP, or EEA (as set forth in Paragraph 89) for payment of the penalties, unless the recipient(s) invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall indicate that the payment is for stipulated penalties, and shall be made in accordance with Paragraph 64(a) and 64(b) (Payment Instructions), except as provided in Paragraph 59 for payment of Natural Resource Damages. All payments to the Commonwealth shall be paid by certified or cashier's check(s) made payable to the Commonwealth of Massachusetts, shall reference the Sutton Brook Disposal Area Superfund Site, MassDEP Site # 3-003893, and shall be mailed to Chief, Environmental Protection Division, Office of the Attorney General, One Ashburton Place, Room 1813, Boston, MA 02108, except as provided in Paragraph 59 for payment of Natural Resource Damages. Such Settling Defendant(s) shall also send copies of such check(s) and transmittal letter to Mark Collins, Branch Chief, Cost Recovery, Fees and Revenue Section, Bureau of Waste Site Cleanup, Department of Environmental Protection, One Winter Street, Boston, MA 02108. Such Settling Defendant(s) shall also send copies of any check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), to the United States and to the Commonwealth as provided in Section XXVI (Notices and Submissions).

91. The payment of penalties shall not alter in any way Performing Settling Defendants' obligation to complete the performance of the Work or each Cashout Settling Defendant's, each De Minimis Settling Defendant's, or the Performing Settling Defendants' obligation to make payments under this Consent Decree.

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

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

b. If the dispute is appealed to this Court and the United States or the Commonwealth 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/or the Commonwealth within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below; and

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 Commonwealth 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/or the Commonwealth or to the appropriate Settling Defendant(s) to the extent that they prevail.

93. If the appropriate Settling Defendant(s) fail to pay stipulated penalties when due, the United States or the Commonwealth may institute proceedings to collect the penalties, as well as Interest. The appropriate Settling Defendant(s) shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand.

94. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the Commonwealth to seek any other remedies or sanctions available by virtue of the 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, M. G. L. c. 21E, and M. G. L. c. 21A; provided, however, that the United States and the Commonwealth shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided in this Consent Decree, except in the case of a willful violation of the Consent Decree.

95. Notwithstanding any other provision of this Section, the United States, and the Commonwealth for penalties owed only to the Commonwealth, may, in their unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXI. COVENANTS NOT TO SUE BY PLAINTIFFS

96. United States' Covenants Not to Sue Performing Settling Defendants and Cashout Settling Defendants. In consideration of the actions that will be performed by Performing Settling Defendants and the payments that will be made by Performing Settling Defendants and each Cashout Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 99 (Pre-Certification Reservations), 100 (Post-Certification Reservations), 108 (Reservations Regarding Natural Resource Damages) and 109 (General Reservations) of this Section, the United States covenants not to sue or to take administrative action against Performing Settling Defendants and each Cashout Settling Defendant pursuant to

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Sections 106 and 107(a) of CERCLA relating to the Site, including with respect to Natural Resource Damages. Except with respect to future liability, these covenants not to sue or take administrative action for Performing Settling Defendants shall take effect on the Effective Date. Except with respect to future liability, these covenants not to sue or take administrative action for each Cashout Settling Defendant shall take effect upon the later of the Effective Date or its full payment pursuant to Paragraph 57 (Payment by Cashout Settling Defendants). With respect to future liability, these covenants not to sue or take administrative action shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 52(b) of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Performing Settling Defendants and each Cashout Settling Defendant of their obligations under this Consent Decree. These covenants not to sue extend only to Performing Settling Defendants and each Cashout Settling Defendant and do not extend to any other person.

97. United States' Covenant Not to Sue De Minimis Settling Defendants. In consideration of the payments that will be made by each De Minimis Settling Defendant under the terms of this Consent Decree, and except as specifically provided by Paragraphs 98 (De Minimis Reservation) and 110 (General Reservations of Rights), the United States covenants not to sue or take administrative action against any of the De Minimis Settling Defendants pursuant to Section 106 or 107 of CERCLA, 42 U.S.C. § 9606 or 9607, relating to the Site including with respect to Natural Resource Damages. With respect to present and future liability, this covenant not to sue shall take effect for each De Minimis Settling Defendant upon the later of the Effective Date or that De Minimis Settling Defendant's full payment pursuant to Paragraph 58 of this Consent Decree (Payment by De Minimis Settling Defendants). With respect to each De Minimis Settling Defendant, individually, this covenant not to sue is conditioned upon: a) the satisfactory performance by that De Minimis Settling Defendant of all of its obligations under this Consent Decree; and b) the veracity of the information provided to EPA by that De Minimis Settling Defendant relating to that De Minimis Settling Defendant's involvement with the Site. This covenant not to sue extends only to De Minimis Settling Defendants and does not extend to any other person.

98. United States' Reservations as to De Minimis Settling Defendants. Notwithstanding any other provision in this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings against any individual De Minimis Settling Defendant in this action or in a new action or to issue an administrative order to any individual De Minimis Settling Defendant seeking to compel that De Minimis Settling Defendant to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if information is discovered which indicates that such De Minimis Settling Defendant contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such De Minimis Settling Defendant no longer qualifies as a *de minimis* party at the Site because that De Minimis Settling Defendant contributed greater than 3% of the total volume of similar wastes contributed by Settling Defendants to the Site, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site.

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99. 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 Performing Settling Defendants and each Cashout Settling Defendant (a) to perform further response actions relating to the Site, or (b) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action: (1) conditions at the Site, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and 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.

100. 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 Performing Settling Defendants and each Cashout Settling Defendant (a) to perform further response actions relating to the Site, or (b) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action: (1) conditions at the Site, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and 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.

101. For purposes of Paragraph 99, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 100, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

102. Commonwealth's Covenants Not to Sue Performing Settling Defendants and Cashout Settling Defendants. In consideration of the actions that will be performed and the payments that will be made by Performing Settling Defendants and each Cashout Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 105 (Pre-Certification Reservations), 106 (Post-Certification Reservations), 108 (Reservations Regarding Natural Resource Damages) and 109 (General Reservations of Rights) of this Section, the Commonwealth, on behalf of MassDEP, covenants not to sue or to take administrative action against Performing Settling Defendants and each Cashout Settling Defendant pursuant to Section 107 of CERCLA and M. G. L. c. 21E for performance of the Work and for recovery of State Past Response Costs, State Future Response Costs, Oversight Costs, and, on behalf of EEA, covenants not to sue or to take administrative action against Performing Settling Defendants and each Cashout Settling Defendant pursuant to Section 107 of CERCLA

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and M. G. L. c. 21E for Natural Resource Damages. As to Performing Settling Defendants' liability for reimbursement of State Past Response Costs and Natural Resource Damages, the foregoing covenant not to sue or take administrative action shall take effect upon Performing Settling Defendants' performance of their obligations in Paragraphs 59 (Payments for Natural Resource Damages) and 60 (Payments for State Past Response Costs) of Section XVI, including payment of any stipulated penalties that may be due thereon pursuant to Section XX (Stipulated Penalties). As to each Cashout Settling Defendants' liability for reimbursement of State Past Response Costs and Natural Resource Damages, the foregoing covenant not to sue or take administrative action shall take effect upon its full payment pursuant to Paragraph 57 (Payment by Cashout Settling Defendants). As to liability for reimbursement of Oversight Costs, State Future Response Costs and performance of the Work, these covenants not to sue or take administrative action shall take effect upon the Certification of Completion of Remedial Action by EPA pursuant to Paragraph 52(b) of Section XIV (Certification of Completion). The Commonwealth's foregoing covenants not to sue are conditioned upon the satisfactory performance by Performing Settling Defendants collectively, and by each Cashout Settling Defendant, individually, of their respective obligations under this Consent Decree. These covenants not to sue extend only to Performing Settling Defendants and Cashout Settling Defendants and do not extend to any other person.

103. Commonwealth's Covenant Not to Sue De Minimis Settling Defendants. In consideration of the payments that will be made by each De Minimis Settling Defendant under the terms of this Consent Decree, and except as specifically provided by Paragraph 104 (De Minimis Reservation) and Paragraph 110 (General Reservations of Rights), the Commonwealth, on behalf of MassDEP and EEA, covenants not to sue or take administrative action against any of the De Minimis Settling Defendants pursuant to Section 106 or 107 of CERCLA, 42 U.S.C. § 9606 or 9607, and M. G. L. c. 21E relating to the Site including with respect to Natural Resource Damages. This covenant not to sue shall take effect for each De Minimis Settling Defendant upon that De Minimis Settling Defendant's full payment pursuant to Paragraph 58 of this Consent Decree (Payment by De Minimis Settling Defendants). With respect to each De Minimis Settling Defendant, individually, this covenant not to sue is conditioned upon: a) the satisfactory performance by that De Minimis Settling Defendant of all of its obligations under this Consent Decree; and b) the veracity of the information provided to EPA by that De Minimis Settling Defendant relating to that De Minimis Settling Defendant's involvement with the Site. This covenant not to sue extends only to De Minimis Settling Defendants and does not extend to any other person.

104. Commonwealth's Reservations as to De Minimis Settling Defendants. Notwithstanding any other provision in this Consent Decree, the Commonwealth reserves, and this Consent Decree is without prejudice to, the right to institute proceedings against any individual De Minimis Settling Defendant in this action or in a new action or to issue an administrative order to any individual De Minimis Settling Defendant seeking to compel that De Minimis Settling Defendant to perform response actions relating to the Site, and/or to reimburse the Commonwealth for additional costs of response, if information is discovered which indicates that such De Minimis Settling Defendant contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such De Minimis Settling

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Defendant no longer qualifies as a *de minimis* party at the Site because that De Minimis Settling Defendant contributed greater than 3% of the total volume of similar wastes contributed by Settling Defendants, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site.

105. Commonwealth's Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the Commonwealth, on behalf of MassDEP, 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 or under M. G. L. c. 21E, seeking to compel Performing Settling Defendants and each Cashout Settling Defendant (a) to perform further response actions relating to the Site, or (b) to reimburse the Commonwealth for additional costs of response actions relating to the Site, to the extent that EPA has determined that such response actions required under (a) and (b) above in this Paragraph will not significantly delay or be inconsistent with the Remedial Action, if, prior to EPA's Certification of Completion of the Remedial Action: (1) conditions at the Site, previously unknown to the Commonwealth, are discovered or become known to the Commonwealth, or (2) information, previously unknown to the Commonwealth, is received by the Commonwealth, in whole or in part, and the Commonwealth determines, pursuant to M. G. L. c. 21E, 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 Commonwealth pursuant to this Paragraph.

106. Commonwealth's Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the Commonwealth, on behalf of MassDEP, 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 or M. G. L. c. 21E, seeking to compel Performing Settling Defendants and each Cashout Settling Defendant (a) to perform further response actions relating to the Site, or (b) to reimburse the Commonwealth for additional costs of response actions relating to the Site, to the extent that EPA has determined that such response actions required under (a) and (b) above in this Paragraph will not significantly delay or be inconsistent with the Remedial Action, if, subsequent to EPA's Certification of Completion of the Remedial Action: (1) conditions at the Site, previously unknown to the Commonwealth, are discovered or become known to the Commonwealth after the Certification of Completion, or (2) information, previously unknown to the Commonwealth, is received by the Commonwealth, in whole or in part, after the Certification of Completion, and the Commonwealth determines, pursuant to M. G. L. c. 21E, based on these previously unknown conditions or this information together with 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 Commonwealth pursuant to this Paragraph.

107. For purposes of Paragraph 105, the information and the conditions known to the Commonwealth shall include only that information and those conditions known to MassDEP as of the date the ROD was signed and set forth in the Record of Decision for the Site and the

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administrative record supporting the Record of Decision. For purposes of Paragraph 106, the information and the conditions known to the Commonwealth shall include only that information and those conditions known to MassDEP no later than 30 days prior to the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by MassDEP pursuant to the requirements of this Consent Decree no later than 30 days prior to Certification of Completion of the Remedial Action.

108. Reservations Regarding Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the United States and the Commonwealth reserve, and this Consent Decree is without prejudice to, the right to institute civil or administrative proceedings, as applicable, against Performing Settling Defendants and each Cashout Settling Defendant in this action or in a new action, seeking recovery of Natural Resource Damages under Section 107 of CERCLA, based on:

a. conditions at the Site, previously unknown to the NR Trustees, that are discovered and are found by any of the NR Trustees 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 the NR Trustees, is received by NR Trustee(s), and any of the NR Trustees determines that such unknown information together with other relevant information indicates 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 any of the NR Trustees, or of a magnitude greater than was known, to any of the NR Trustees.

For purposes of this Paragraph, the information and conditions known to the NR Trustees shall include only the information and conditions: (i) known to the NR Trustees as of the date of lodging of this Consent Decree and (ii) set forth in the EPA administrative record as of the date of lodging of this Consent Decree.

109. General Reservations of Rights Against Performing Settling Defendants and Cashout Settling Defendants. The United States and the Commonwealth reserve, and this Consent Decree is without prejudice to, all rights against Performing Settling Defendants and each Cashout Settling Defendant with respect to all matters not expressly included within Plaintiffs' covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States and the Commonwealth reserve all rights against Performing Settling Defendants and each Cashout Settling Defendant with respect to:

a. claims based on a failure by Performing Settling Defendants and each Cashout Settling Defendant to meet an applicable requirement of this Consent Decree;

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

c. liability based on the ownership or operation of the Site by Performing Settling Defendants and each Cashout Settling Defendant after signature of this Consent Decree by Performing Settling Defendants and each Cashout Settling Defendant, excluding any such liability arising solely as a result of the transfer of title of property located on the Site to the Town of Tewksbury pursuant to the process set forth in Paragraph 27 of this Consent Decree, as to

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releases which are the subject of the remedy selected in the ROD;

d. liability based on Performing Settling Defendants' and each Cashout Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by Settling Defendants;

e. criminal liability;

f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and

g. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 14 (Modification of the SOW or Related Work Plans).

110. General Reservation of Rights Against De Minimis Settling Defendants. The United States and the Commonwealth reserve, and this Consent Decree is without prejudice to, all rights against each De Minimis Settling Defendant with respect to all matters not expressly included within Plaintiffs' covenants not to sue in Paragraphs 97 and 103. Notwithstanding any other provision of this Consent Decree, the United States and the Commonwealth reserve all rights against that De Minimis Settling Defendant with respect to:

a. liability for failure to meet a requirement of this Consent Decree;

b. criminal liability; or

c. liability based upon the ownership or operation of the Site, or upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by that De Minimis Settling Defendant.

111. 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, with a copy to MassDEP. 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 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 10-day notice period specified in Paragraph 111(a), 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

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(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 XIX (Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 111(b). 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 Paragraph 111(b) 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 XIX (Dispute Resolution), requiring EPA to terminate such Work Takeover.

d. After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any performance guarantee(s) provided pursuant to Section XIII (Performance Guarantee) of this Consent Decree, in accordance with the provisions of Paragraph 50 of that Section. If and to the extent that EPA is unable to secure the resources guaranteed under any such performance guarantee(s) and the 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 50, any unreimbursed costs incurred by EPA in performing Work under the Work Takeover shall be considered United States Future Response Costs that Performing Settling Defendants shall pay pursuant to Section XVI (Payments for Response Costs and Natural Resource Damages).

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

XXII. COVENANTS BY SETTLING DEFENDANTS

113. Covenant Not to Sue. Subject to the reservations in Paragraph 114, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or the Commonwealth, including any department, agency or instrumentality of the United States or the Commonwealth, with respect to the Site, 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 Sections 106(b)(2), 107, 111, 112, and 113 of CERCLA, or any other provision of law;

b. any claims under CERCLA Sections 107 or 113 or M. G .L. c. 21E, related to the Site; or

c. any claims arising out of response actions at or in connection with the Site, including claims based on EPA's or MassDEP's, as the case may be, selection of response actions, oversight of response activities or approval of plans for such activities, including any claim under the United States Constitution, the Massachusetts 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.

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114. Except as provided in Paragraph 116 (Waiver of Claims Against MSW Generators and Transporters), and Paragraph 124 (Waiver, Res Judicata and Other Defenses), these covenants not to sue shall not apply in the event that the United States or the Commonwealth brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 99 (United States Pre-Certification Reservations), 100 (United States Post-Certification Reservations), 105 (Commonwealth's Pre-Certification Reservations), 106 (Commonwealth's Post-Certification Reservations) and 109 (General Reservations), other than the General Reservations set forth in Paragraphs 109(a) (failure to comply), 109(e) (criminal liability) or 109(f) (violations of law during or after implementation of the Remedial Action), or as to De Minimis Settling Defendants, Paragraphs 98 (reopener), 110(b) (criminal liability) or 110(c) (violations of 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 Commonwealth is seeking pursuant to the applicable reservation. Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of 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.

115. 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).

116. Waiver of Claims Against MSW Generators and Transporters. Settling Defendants agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for all matters relating to the Site against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of Municipal Solid Waste ("MSW") at the Site, if the volume of MSW disposed, treated or transported by such person to the Site did not exceed 0.2 percent of the total volume of waste at the Site.

117. The waiver in Paragraph 116 shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Settling Defendant. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines that: (a) the MSW contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action

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or natural resource restoration at the Site; (b) the person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927; or (c) the person impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site.

118. De Minimis Settling Defendants' Waiver of Claims. De Minimis Settling Defendants agree not to assert any claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA or M.G.L. c. 21E) that they may have for all matters relating to the Site against each other or any other person who is a potentially responsible party under CERCLA or M.G.L. c. 21E at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a De Minimis Settling Defendant may have against any person if such person asserts or has asserted a claim or cause of action relating to the Site against such De Minimis Settling Defendant.

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

119. Except as provided in Paragraph 116 (Waiver of Claims Against MSW Generators and Transporters) and Paragraph 118 (De Minimis Settling Defendants' Waiver of Claims) nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 116 (Waiver of Claims Against MSW Generators and Transporters) and Paragraph 118 (De Minimis Settling Defendants' Waiver of Claims), 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 or the Commonwealth, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), and Chapter 21E, as applicable, 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) of CERCLA, or Chapter 21E.

120. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), and that each Performing Settling Defendant is entitled, as of the Effective Date, and each Cashout Settling Defendant and De Minimis Settling Defendant, is entitled on the later of the Effective Date or the date on which it makes or causes to be made its full payment pursuant to Paragraphs 57 and 58, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and for De Minimis Settling Defendants, Section 122(g)(5) of CERCLA, 42 U.S.C. § 9622(g)(5), or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred and Natural Resource Damages, at or in connection with the Site, by the United States and the Commonwealth or any other person; provided, however, that if the United States exercises rights under the reservations in Section XXI (Covenants Not to Sue by Plaintiffs), other than in Paragraphs 109(a) and 110(a) (claims for

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failure to meet a requirement of settlement), 109(e) and 110(b) (criminal liability), or 109(f) (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 those reservations.

121. The Parties agree, and by entering this Consent Decree this Court finds, that pursuant to M. G. L. c. 21E, § 3A(j)(2), each Performing Settling Defendant is entitled, as of the Effective Date, and each Cashout Settling Defendant and De Minimis Settling Defendant, on the Effective Date or the date on which the Commonwealth receives notice that it has made or caused to be made its full payment pursuant to Paragraphs 57 and 58, whichever comes later, is entitled to protection from claims brought pursuant to M. G. L. c. 21E, regarding the matters addressed in this Consent Decree for the Site, for cost recovery, contribution, and equitable share as to those persons receiving notice and an opportunity to comment on this Consent Decree in accordance with M. G. L. c. 21E, § 3A(j)(2). As of the date of entry of this Consent Decree, this Consent Decree constitutes a “judicially approved settlement” as that term is used in M. G. L. c. 21E, § 3A(j)(2). For purposes of this Paragraph, “matters addressed” shall be as defined in Paragraph 120. The 90-day comment period shall commence 30 days after the date of lodging of this Consent Decree. Settling Defendants’ failure to provide timely and adequate notice to one person shall not affect their rights as against any other person who received such notice.

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

123. Each Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing the United States and the Commonwealth, within 10 days of service of the complaint on each such Settling Defendant. In addition, each such Settling Defendant shall notify the United States and the Commonwealth within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

124. Waiver, Res Judicata and Other Defenses. In any subsequent administrative or judicial proceeding initiated by the United States or the Commonwealth 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 Commonwealth in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiffs).

XXIV. ACCESS TO INFORMATION

125. Settling Defendants shall provide to EPA and the Commonwealth, upon request, copies of all records, reports, documents, electronic files, and other information (hereinafter referred to as “Records”) 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

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limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA and the Commonwealth, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

126. Business Confidential and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the Records 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). Records 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 Records when they are submitted to EPA, or if EPA has notified Settling Defendants that the Records 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 Records without further notice to Settling Defendants.

b. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to the Commonwealth under this Consent Decree to the extent permitted by and in accordance with State law. Documents or information determined to be confidential by MassDEP will be afforded by the Commonwealth the protection specified under State law. If no claim of confidentiality accompanies documents or information when they are submitted to the Commonwealth, or if MassDEP has notified Settling Defendants that the documents or information are not confidential under State law, the public may be given access to such documents or information without further notice to Settling Defendants.

c. Settling Defendants may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing Records, they shall provide Plaintiffs with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the contents of the Record; and (6) the privilege asserted by Settling Defendants. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States and the Commonwealth in redacted form to mask the privileged portion only. Settling Defendants shall retain all Records that they claim to be privileged until the United States and the Commonwealth have had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

d. No Records created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged or confidential.

127. No claim of confidentiality or privilege 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.

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XXV. RETENTION OF RECORDS

128. Until 10 years after Settling Defendants' receipt of EPA's notification pursuant to Paragraph 53(b) of Section XIV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all non-identical copies of Records (including Records 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 or Chapter 21E with respect to the Site, provided, however, that Settling Defendants who are potentially liable as owners or operators of the Site or as transporters to the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA or Chapter 21E 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 Records (including 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 Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

129. At the conclusion of this document retention period, Settling Defendants shall notify the United States and the Commonwealth at least 90 days prior to the destruction of any such Records, and, upon request by the United States or the Commonwealth, Settling Defendants shall deliver any such Records to EPA and/or MassDEP. Settling Defendants may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiffs with the following: (a) the title of the Record; (b) the date of the Record; (c) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (d) the name and title of each addressee and recipient; (e) a description of the subject of the Record; and (f) the privilege asserted by Settling Defendants. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States and the Commonwealth in redacted form to mask the privileged portion only. Settling Defendants shall retain all Records that they claim to be privileged until the United States and the Commonwealth have had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Defendants' favor. However, no Records created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged or confidential.

130. 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 (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the Commonwealth or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and MassDEP requests for information pursuant to M. G. L. c. 21E, if any.

131. Settling Defendants may establish a document and data storage repository ("Record Repository") in a form and at a location acceptable to EPA and MassDEP. Performing

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Settling Defendants shall ensure that the Record Repository maintains and secures all stored Records and organizes all Records in a manner that enables retrieval of all Records submitted to each Settling Defendant. Notwithstanding any other obligation set forth in this Section XXII and subject to their ability to assert claims of privilege as provided above, any Settling Defendant, other than a Settling Defendant that is potentially liable on the Effective Date as an owner or operator of the Site or a transporter to the Site, and any contractor or agent of a Settling Defendant, other than a Settling Defendant that is potentially liable as of the Effective Date as an owner or operator of the Site or a transporter to the Site, may comply with its obligations under this Section to retain Records that relate to its or its predecessors' arrangement for disposal at the Site by taking the following steps:

- a. The Settling Defendant or contractor or agent of a Settling Defendant shall execute a certification containing the language of the first sentence of Paragraph 128.
- b. The Settling Defendant shall certify that it has sent originals or copies of all non-identical copies of Records and documents (including Records or documents in electronic form) then in its possession or control that relates to its or its predecessors' arrangement for disposal at the Site to the Record Repository.
- c. The contractor or agent of a Settling Defendant shall certify that it has sent originals or copies of all non-identical copies of Records and documents (including Records or documents in electronic form) then in its possession or control that relates to its client's or principal's arrangement for disposal at the Site to the Record Repository.

XXVI. NOTICES AND SUBMISSIONS

132. 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 in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the Commonwealth, MassDEP and Settling Defendants, respectively. Notices required to be sent to EPA, and not to the United States, under the terms of this Consent Decree should not be sent to the U.S. Department of Justice. Notices required to be sent to MassDEP, and not to the Commonwealth, under the terms of this Consent Decree should not be sent to the Massachusetts Office of the Attorney General.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-07854/1 and 07854/2

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As to EPA:

Don McElroy
EPA Project Coordinator
United States Environmental Protection Agency
Region 1, New England
One Congress Street, Suite 1100
Boston MA 02114

As to the Regional Financial
Management Officer:

Regional Financial Management Officer
United States Environmental
Protection Agency Mail Code MCO
Region 1, New England
One Congress Street, Suite 1100
Boston MA 02114

As to the Commonwealth:

Louis Dundin, Assistant Attorney General
Environmental Protection Division
Massachusetts Office of the Attorney General
One Ashburton Place
Boston, MA 02108
RE: Sutton Brook Disposal Area Superfund Site

and

Dorothy Allen
State Project Manager
Sutton Brook Disposal Area Superfund Site
Department of Environmental Protection
Bureau of Waste Site Cleanup
One Winter Street, 8th Floor
Boston, MA 02108

As to MassDEP:

Dorothy Allen
State Project Manager
Sutton Brook Disposal Area Superfund Site
Department of Environmental Protection
Bureau of Waste Site Cleanup
One Winter Street, 8th Floor
Boston, MA 02108

As to Performing Settling Defendants,
Cashout Settling Defendants, or De Minimis
Settling Defendants:

Thomas Dorsey
de maximis, inc.
450 Montbrook Lane
Knoxville, TN 37919

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With a copy to:

Robert C. Kirsch, Esq.
Wilmer Cutler Pickering Hale and Dorr
60 State Street
Boston, MA 02109

XXVII. RETENTION OF JURISDICTION

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

XXVIII. APPENDICES

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

“Appendix A” is the ROD.

“Appendix B” is the SOW.

“Appendix C” is the map of the Site.

“Appendix D-1” is the list of Performing Settling Defendants.

“Appendix D-2” is the list of and payment amounts for Cashout Settling Defendants.

“Appendix D-3” is the list of and payment amounts for De Minimis Settling Defendants.

“Appendix D-4” is the payment schedule for the Town.

“Appendix E” is the Form of Grant of Environmental Restriction and Easement.

“Appendix F-1” is the form of the Sutton Brook Disposal Area Superfund Site De Minimis Settlement Trust Agreement.

“Appendix F-2” is the form of the Sutton Brook Disposal Area Superfund Site Settlement Trust Agreement.

“Appendix F-3” is the Performance Guarantee financial test demonstration for a local government or political subdivision of the State.

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XXIX. COMMUNITY RELATIONS

135. If requested by EPA, Performing Settling Defendants shall participate in the community relations plan to be developed by EPA after a reasonable opportunity for review and comment by the Commonwealth. EPA will determine the appropriate role for Performing Settling Defendants under the Plan. Performing Settling Defendants shall also cooperate with EPA and the Commonwealth in providing information regarding the Work to the public. As requested by EPA or the Commonwealth, 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 Commonwealth to explain activities at or relating to the Site.

XXX. MODIFICATION

136. Material modifications to the SOW may be made only by written notification to and written approval of the United States, Performing Settling Defendants, and the Court. Prior to providing its approval to any material modification, the United States will provide the Commonwealth with a reasonable opportunity to review and comment on the proposed modification.

137. Modifications to the schedules specified in the Consent Decree for completion of the Work, or modifications to the SOW that do not materially alter that document, may be made by written agreement between EPA, after providing the Commonwealth with a reasonable opportunity to review and comment on the proposed modification, and the Performing Settling Defendants. Such non-material modifications will become effective thereafter when signed by EPA and Performing Settling Defendants.

138. Non-material modifications to the Consent Decree other than those addressed above in Paragraph 137 may be made only by written notification to and written approval of the United States, the Commonwealth and the Settling Defendants. Such modifications will become effective upon filing with the Court by the United States. Material modifications to the Consent Decree and any modifications to the Performance Standards may be made only by written notification to and written approval of the United States, the Commonwealth, the Settling Defendants, and the Court.

139. Nothing in this Section shall affect the obligations of the Performing Settling Defendants pursuant to the provisions of Paragraph 14 (Modification of the SOW or Related Work Plans) of this Consent Decree.

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

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

142. For purposes of this Section, the Consent Decree shall not include the SOW or other attachments to the Consent Decree.

Sutton Brook Disposal Area Superfund Site Consent Decree

XXXI. CERTIFICATION OF DE MINIMIS SETTling DEFENDANTS

143. By signing this Consent Decree, each De Minimis Settling Defendant certifies, individually, that, to the best of its knowledge and belief, it:

a. has conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. has and will comply fully with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), or similar requests from MassDEP, if any.

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

144. 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. In the event of the United States' withdrawal from this Consent Decree, the Commonwealth reserves its right to withdraw from this Consent Decree. The Commonwealth also reserves the right to withdraw or withhold its consent to the entry of this Consent Decree if comments received disclose facts or considerations which show that the Consent Decree violates State law, or if comments received disclose facts or considerations which show that the Consent Decree's termination of the rights of third parties by operation of M. G. L. c. 21E, § 3A (j)(2) would render the Consent Decree unfair. In the event of the Commonwealth's withdrawal from this Consent Decree, the United States reserves its right to withdraw from this Consent Decree. Settling Defendants consent to the entry of this Consent Decree without further notice.

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

XXXIII. SIGNATORIES/SERVICE

146. Each undersigned representative of a Settling Defendant to this Consent Decree, the Commonwealth, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

Sutton Brook Disposal Area Superfund Site Consent Decree

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

148. 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. Settling Defendants need not file an answer to the complaints in this action unless or until the Court expressly declines to enter this Consent Decree.

XXXIV. FINAL JUDGMENT

149. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the Commonwealth, and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 9 DAY OF NOV., 2010.

/s/ Mark L. Wolf

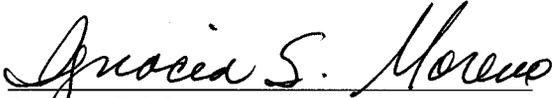
United States District Judge

Sutton Brook Disposal Area Superfund Site Consent Decree

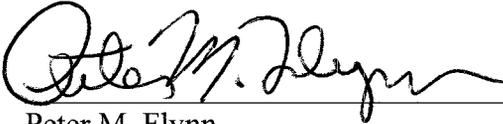
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR THE UNITED STATES OF AMERICA

12/15/09
Date


Ignacia S. Moreno
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

12/22/09
Date


Peter M. Flynn
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-4352
peter.flynn@usdoj.gov

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR THE COMMONWEALTH OF MASSACHUSETTS:

MARTHA COAKLEY
ATTORNEY GENERAL

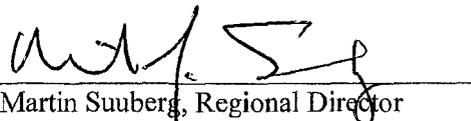
10/27/09
Date


By Louis Dundin
Assistant Attorney General
Environmental Protection Division
Massachusetts Office of the Attorney General
One Ashburton Place, Room 1813
Boston, MA 02108

10/27/09
Date


By Matthew Brock
Assistant Attorney General (for NRD Only)
Environmental Protection Division
Massachusetts Office of the Attorney General
One Ashburton Place, Room 1813
Boston, MA 02108

9/23/09
Date


Martin Suuberg, Regional Director
Central Regional Office
Department of Environmental Protection
627 Main Street
Worcester, MA 01608

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Allied Waste Systems, Inc., for itself and on behalf of predecessor Reliable Rubbish Disposal, Inc.

September 18, 2009
Date

Signature: 
Name (print): Tim M. Benter
Title: Vice President
Address: Republic Services, Inc.
18500 N. Allied Way
Phoenix, AZ 85054

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

Name (print): CT Corporation System
~~Title:~~ 155 Federal Street
Address: Ste 700
Boston, MA 02110
Ph. Number: 617-757-6400

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR AMERICAN SCIENCE AND ENGINEERING, INC.

September 9, 2009
Date

Signature: 
Name (print): Patricia A. Gray
Title: Senior Vice President & General Counsel
Address: 829 Middlesex Turnpike
Billerica, MA 01821

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

Name (print): Patricia A. Gray
Title: Senior Vice President & General Counsel
Address: 829 Middlesex Turnpike
Billerica, MA 01821
Ph. Number: 978-262-8700

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Anton's Cleaners, Inc.:

Date 9/9/09

Signature: 
Name (print): Charles A. Anton
Title: president
Address: 500 Clark Road
Tewksbury, MA 01876

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

Name (print): Franklin G. Stearns, Esq.
Title: Partner
Address: K+L GATES, LLP
One Lincoln Street
Boston, MA 02111-2950
Ph. Number: 617-951-9275

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

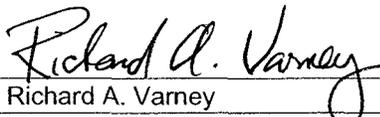
Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

Ausimont Industries, Inc., for itself and on behalf of predecessor entities
FOR Compo Industries, Inc., Pandel-Bradford, Inc., and Pandel, Inc.

September 22, 2009

Date

Signature: 
Name (print): Richard A. Varney
Title: Designated Agent
Address: Ausimont Industries, Inc.
3 Prospect Street
Morristown, NJ 07960

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

Name (print): Mitchell Gertz
Title: Director, Health, Safety and Environment
Address: c/o Solvay Solexis, Inc.
10 Leonard Lane
West Deptford, NJ 08086
Ph. Number: 856-251-6630

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR AVCO Corporation *

September 23, 2009
Date

Signature: 
Name (print): Carl G. Buzawa
Title: Assistant Secretary
Address: 201 Lowell St.
Wilmington, MA 01887

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

Name (print): Jamieson Schiff
Title: Director
Address: 40 Westminister St.
Providence, RI 02903
Ph. Number: 401.457.2422

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR BASF Corporation.

September 29, 2009
Date

Signature: Nan Bernardo
Name (print): NAN BERNARDO
Title: SENIOR ENVIRONMENTAL COUNSEL
Address: BASF Corporation
100 Campus Drive
Florham Park, NJ
07932

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

Name (print): Nan Bernardo
Title: Senior Environmental Counsel
Address: BASF Corporation
100 Campus Drive
Florham Park, NJ 07932
Ph. Number: 973-245-6050

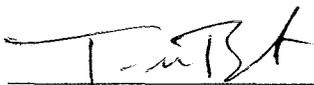
* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

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FOR **BFI Waste Systems of North America, LLC**

September 18, 2009
Date

Signature: 
Name (print): Tim M. Benter
Title: Vice President
Address: Republic Services, Inc.
18500 N. Allied Way
Phoenix, AZ 85054

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

Name (print): CT Corporation System
Title:
Address: 155 Federal Street Ste. 700
Boston, MA 02110
Ph. Number: 617-757-6400

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR BOSTON & MAINE Corp.

10/9/09
Date

Signature: Dana Banks
Name (print): Dana Banks
Title: Environmental Director
Address: 1700 Iron Horse Park
North Billerica, MA 01862

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

Name (print): ROBERT B. BURNS, Esq.
Title: CORPORATE COUNSEL
Address: 1700 IRON HORSE PARK
No. Billerica, MA 01862
Ph. Number: (978) 663-1215

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR **Browning-Ferris Industries, Inc. (Massachusetts), for itself and on behalf of predecessor entities Barry Bros., Inc., Greenwood Disposal Company, Inc., and Miller Disposal Services, Inc.**

September 18, 2009
Date

Signature: TMB
Name (print): Tim M. Benter
Title: Vice President
Address: 18500 N. Allied Way
Phoenix, AZ 85054

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

Name (print): CT Corporation System
Title: _____
Address: 155 Federal Street
Ste. 700
Boston, MA 02110
Ph. Number: 617-757-6400

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR BTU INTERNATIONAL, INC.

September 15, 2009
Date


Signature: _____
Name (print): Paul van der Wansem
Title: BTU INTERNATIONAL, INC.
Address: 23 ESQUIRE ROAD
NORTH BILLERICA, MA 01862

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

Name (print): COLBURN T. CHERNEY
Title: PARTNER
Address: ROPES & GRAY, LLP
700 12th STREET, NW, SUITE 900
WASHINGTON, DC 20005
Ph. Number: 202-508-4614

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

Handwritten initials and date:
DJP
9-15-09

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Cabot Corporation *

9/8/09
Date

Signature: 
Name (print): Brian A. Berube
Title: Vice President & General Counsel
Address: Two Seaport Lane, Suite 1300
Boston, MA 02210

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

Name (print): Gerard A. Caron
Title: Counsel for Cabot Corporation
Address: Two Seaport Lane, Suite 1300
Boston, MA 02210

Ph. Number: (617) 342-6080

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

Sutton Brook Disposal Area Superfund Site Consent Decree

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FOR Computervision LLC, by its sole member
Parametric Technology Corporation *

September 4, 2009
Date

Signature: 
Name (print): Aaron C. von Staats
Title: Secretary
Address: 140 Kendrick Street
Needham, MA 02494

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

Name (print): Corporation Trust Company
Title: _____
Address: 1209 Orange Street
Wilmington, DE 19801

Ph. Number: (866) 252-8615

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR E. I. du Pont de Nemours *and Company

Sept 11 2009
Date

Signature: 
Name (print): Tom A. Ei
Title: Remediation Team Manager
Address: De Pont Co.
4417 Lancaster Pike
CRP 715/204
Wilmington DE 19805

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

Name (print): Patricia McGee
Title: Corporate Counsel
Address: 1007 Market Street
Wilmington, DE 19898
Ph. Number: 302-773-0149

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Emhart Industries, Inc.

9/9/09
Date

Signature: Linda H. Biagioni
Name (print): Linda H. Biagioni
Title: Vice President
Address: Emhart Industries, Inc.
701 East Joppa Road
Towson, MD 21286

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

Name (print): Laura Ford Brust
Title: Counsel
Address: Sullivan & Worcester LLP
1666 K Street, NW
Washington, DC 20006
Ph. Number: (202) 370-3923

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR FC Meyer Packaging Inc

9/16/09
Date

Signature: 
Name (print): Kenneth B. Schulman
Title: President
Address: 108 Main St
Norwalk CT 06851

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

Name (print): SAME AS ABOVE
Title: _____
Address: 108 MAIN ST
NORWALK CT 06851
Ph. Number: 203.847.8500

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Fisons Corporation

September 15, 2009
Date

Signature: Kathleen A Winter
Name (print): Kathleen A. Winter
Title: President
Address: 3711 Kennett Pike
Greenville, Delaware 19807

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

Name (print): Corporation Service Company
Title: - - -
Address: 2711 Centerville Road
Suite 400
Wilmington, Delaware 19808
Ph. Number: 1-800-927-9800

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR General Lark and Chemical Corporation

September 9, 2009
Date

Signature: Mary H. Terzino
Name (print): MARY H. TERZINO
Title: Authorized Representative
Address: 2030 Dow Center
Midland, MI
48674

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

Name (print): CT Corporation System
Title: _____
Address: 155 Federal Street
Suite 700
Boston, MA 02110
Ph. Number: _____

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR The Gillette Company *

Sept 10, 2009
Date

Signature: Margaret W. Dewan
Name (print): Margaret W. Dewan
Title: Senior Counsel
Address: 299 East 6th Street, 9th Fl
Cincinnati, OH 45202

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

Name (print): Margaret W. Dewan
Title: Senior Counsel
Address: 299 East 6th Street, 9th fl
Cincinnati, OH 45202
Ph. Number: 513-983-1549

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Hewlett Packard Company and its predecessors (including Apollo Computer, Inc. and Digital Equipment Corporation)*

September 6, 2009

DATE

* Signature: 

Name (print): Jonathan Bauer

Title: Environmental Affairs Manager

Address: Hewlett Packard Company

1501 Page Mill Road, 1000

Palo Alto, California 94304

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

cc: Christopher M. Roe, Esquire
Fox Rothschild LLP
Eagleview Corporate Center
747 Constitution Drive
Suite 100
P.O. Box 673
Exton, PA 19341
(610) 458-4900

Name (print): Jennifer Morris

Title: Environmental In House Counsel

Address: Hewlett Packard Company

3000 Hanover Street

MS-1050

Palo Alto, California 94304

Ph. Number: (650) 857-7781

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Holt and Bugbee Company

09/09/2009
Date

Signature: 
Name (print): William A. Collins
Title: Vice President Finance
Address: 1600 Shawsheen Street
Tewksbury, MA 01876

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

Name (print): David P. Rosenblat
Title: Attorney for Holt and Bugbee Company
Address: Burns & Levinson LLP
125 Summer Street
Boston, MA 02110
Ph. Number: (617) 345-3330

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Honeywell International Inc.

September 16, 2009
Date

Signature: 
Name (print): John J. Morris
Title: Remediation Portfolio Director
Address: 101 Columbia Road
Morristown, New Jersey 07962

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

Name (print): Kerri Stelcen
Title: Associate
Address: Arnold & Porter LLP
555 Twelfth Street, NW
Washington, DC 20004
Ph. Number: 202-942-5529

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR LEGGETT & PLATT, INCORPORATED

For itself and on behalf of its predecessor entities
Cambridge Tool and Manufacturing Co., Inc. and
JapEnamelac Corp.

9/16/09
Date

Signature: [Handwritten Signature]
Name (print): Scott Douglas
Title: U.P.
Address: 1 Leggett Road
Carthage MO 64836

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

Name (print): Ernest Jett
Title: Senior Vice President
Address: 1 Leggett Road
Carthage, MO 64836
Ph. Number: 417-358-8131

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Lockheed Martin Corp. (for itself and on behalf of predecessor entity RCA)

September 8, 2009
Date

Signature: 
Name (print): Brad W. Owens
Title: Director, Environmental Remediation
Address: Lockheed Martin Corp.
6801 Rockledge Dr.
Bethesda, MD 20817

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

Name (print): Corporation Service Company
Title: _____
Address: 84 State Street
Boston, MA 02109
Ph. Number: (617) 227-9590

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

M/A-COM, Inc., for itself and on behalf
of predecessor entity Microwave
FOR Associates, Inc.

9-29-09
Date

Signature: 
Name (print): Carl Schultz
Title: Sr. Counsel
Address: M.S. 140-42
P.O. Box 3608
Harrisburg PA 17105

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

Name (print): Bonnie A. Barnett
Title: Counsel
Address: One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103
Ph. Number: (215) 988-2916

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Majilite Manufacturing, Inc.

Sept 14/2009
Date

Signature: 
Name (print): C. Michael Willwerth
Title: President
Address: Majilite Manufacturing, Inc.
1530 Broadway Road
Dracut, MA 01826

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

Name (print): Frank C. DeGuire, Jr.
Title: General Counsel
Address: Meridian Industries, Inc.
100 E. Wisconsin Ave. Suite 2750
Milwaukee, WI 53202
Ph. Number: 414-224-0610

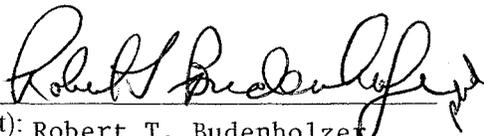
* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

Mallinckrodt LLC, for itself and on behalf of predecessor entity
FOR ~~International Minerals and Chemical Co.~~ on behalf of its subsidiary
Kingston Steel Drum Co.

9/28/2009
Date

Signature: 
Name (print): Robert T. Budenholzer
Title: Vice President
Address: 675 McDonnell Blvd.
Hazelwood, MO 63042

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

Name (print): Patricia H. Duft
Title: Vice President
Address: Mallinckrodt LLC d/b/a Covidien
675 McDonnell Blvd.
Hazelwood, MO 63042
Ph. Number: 314-654-2000

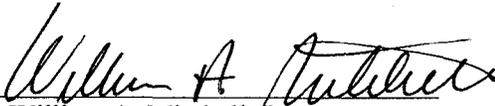
* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

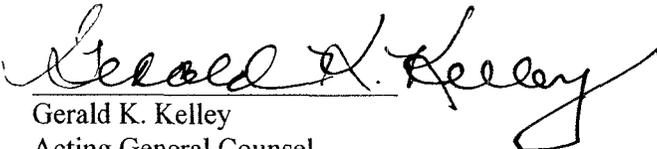
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

September 30, 2009

Signature: 
Name: William A. Mitchell, Jr.
Title: Acting General Manager
Address: Massachusetts Bay Transportation Authority
Ten Park Plaza
Boston, MA 02116-3974

APPROVED AS TO FORM:


Gerald K. Kelley
Acting General Counsel

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

Name: Gerald K. Kelley
Title: Acting General Counsel
Address: Massachusetts Bay Transportation Authority
Ten Park Plaza, Legal Dept, 7th Floor
Boston, MA 02116-3974
Phone: (617) 222-3469

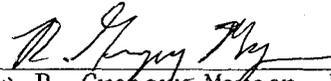
* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Massachusetts Institute of Technology

9/18/09
Date

Signature: 
Name (print): R. Gregory Morgan, Esq.
Title: Vice President and General Counsel
Address: 77 Massachusetts Avenue
Room 7-206
Cambridge, MA 02139-3407
(617) 452-2082

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

Name (print): Jaren D. Wilcoxson, Esq.
Title: Counsel
Address: 77 Massachusetts Avenue
Building 10-370
Cambridge, MA 02139-3407
Ph. Number: (617) 253-7724

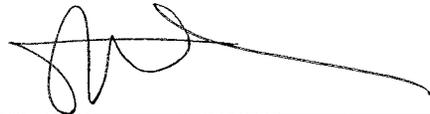
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Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Millen Inc f/k/a Millen Industries, Inc.

9/16/09
Date


Signature:
Name (print): Steven A. Schulman
Title: President
Address: 108 Main Street
Norwalk CT
06851

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

Name (print): SAME AS ABOVE
Title: _____
Address: 108 MAIN ST
NORWALK, CT 06851
Ph. Number: 203.847.5500

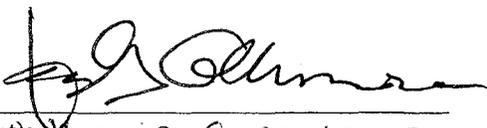
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Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Millen Industries, Inc.: a/k/a
Frank C. Meyer

10.25.09
Date

Signature: 
Name (print): Kevin G. Collimore
Title: Counsel for Millen Industries, Inc.
Address: 10 East Pearl Street
Nashua, NH 03060

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

Name (print): Kevin G. Collimore
Title: Counsel for Millen Industries, Inc.
Address: 10 East Pearl Street
Nashua, NH 03060
Ph. Number: 603-881-5500

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Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR National Grid USA, for itself and on behalf
of its subsidiaries New England Power Company
and Massachusetts Electric Company

9/30/09
Date

Signature: 
Name (print): DAVID C. LODEMORE
Title: VP ENVIRONMENTAL
Address: 40 SYWAN ROAD
WALTHAM MA 02451

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

Name (print): Robert C. Kirsch
Title: Partner
Address: WilmerHale
60 State Street
Boston, MA 02109
Ph. Number: (617) 526-6779

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR NEW BALANCE ATHLETIC SHOE, INC

SEPT 11, 2009
Date

Signature: 
Name (print): JOHN K. WITHERS
Title: EXECUTIVE VICE PRESIDENT
Address: 20 CURST ST
BOSTON MASS 02131

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

Name (print): Christopher P. Davis
Title: Partner
Address: Goodwin Procter LLP
Exchange Place
Boston, MA 02109
Ph. Number: 617-570-1354

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Piconics, Inc.

Date September 14, 2009

Signature: [Handwritten Signature]
Name (print): Daniel B. Merrill
Title: General Manager
Address: Piconics, Inc.
26 Cummings Road
Tyngsboro, MA 01879-1498

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

Same as above, also
Name (print): Jamy A. Madaja, Esq.
Title: Attorney
Address: Buchanan & Associates
33 Mt. Vernon St.
Boston, MA 02108
Ph. Number: 617-227-8410

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Raytheon Company

Date 9/14/2009

Signature: 
Name (print): Robert J. Moore
Title: Vice President - Business Services
Address: 870 Winter Street
Waltham, MA 02451

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

Name (print): Jeffrey B. Axelrod
Title: Senior Environmental Counsel
Address: 870 Winter Street
Waltham, MA 02451
Ph. Number: 781-522-3059

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Roche Brothers Barrel & Drum Co., Inc.

9/11/09
Date

Signature: Charles E. Roche
Name (print): Charles E. Roche
Title: President
Address: 161 Phoenix Avenue
Lowell, MA 01852

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

Name (print): Francis M. Lynch
Title: Attorney
Address: Keegan Werlin LLP
265 Franklin Street
Boston, MA 02110
Ph. Number: 617-951-1400

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Schneider Automation

Division of Square D Company, for itself
and on behalf of predecessor entity
Modicon, Inc.

Date 10/13/09

Signature: Robert W. Bell

Name (print): ROBERT W. BELL

Title: ATTORNEY

Address: 90 SCHNEIDER AUTOMATION

ONE HILL STREET

NORTH ANDOVER, MA 01845

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

Name (print): Bonnie Allyn Barnett

Title: Counsel - Drinker Biddle & Reath

Address: One Logan Square

18th & Cherry Sts.

Philadelphia, PA 19103

Ph. Number: (215) 988-2700

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Sears, Roebuck and Co.

September 28, 2009
Date

Signature: 
Name (print): DIANA HSU
Title: Assistant General Counsel
Address: SEARS
3333 Beverly Rd. B6-339A
Hoffman Estates, IL 60179

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

Name (print): LAW DEPARTMENT - SEARS
Title: _____
Address: 3333 Beverly Rd.
Hoffman Estates, IL 60179
Ph. Number: 847-286-2400

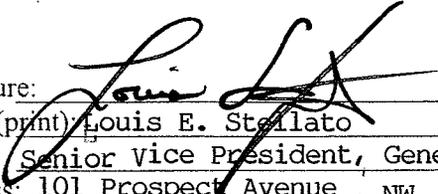
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Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR The Sherwin-Williams Company

September 15, 2009
Date

Signature: 
Name (print): Louis E. Stellato
Title: Senior Vice President, General Counsel & Secretary
Address: 101 Prospect Avenue, NW
1100 Midland Building
Cleveland, OH 44115-1075

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

Name (print): Allen J. Danzig
Title: Associate General Counsel - Environmental
Address: The Sherwin-Williams Company
101 Prospect Avenue, NW
Cleveland, OH 44115-1075
Ph. Number: 216-566-2482

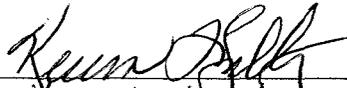
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Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR SPX Corporation, for itself and on behalf of predecessor entity GCA Corporation

Date 9/8/09

Signature: 
Name (print): KEVIN W KELLY
Title: SENIOR VICE PRESIDENT
Address: SPX Corporation
13515 Ballantyne Corporate Place
Charlotte, NC 28277

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

Name (print): Daniel McGrade
Title: Director, Environmental
Address: SPX Corporation
13515 Ballantyne Corporate Place
Charlotte, NC 28277
Ph. Number: (704) 752-4430

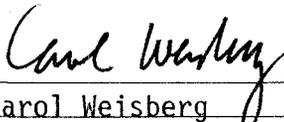
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Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Tewksbury State Hospital (Massachusetts Dept. of Public Health)

09-22-09
Date

Signature: 
Name (print): Carol Weisberg
Title: Chief Financial Officer
Address: 250 Washington Street
Boston, MA 02108

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

Name (print): James Ballin
Title: Deputy General Counsel
Address: Office of the General Counsel
250 Washington Street
Boston, MA 02108
Ph. Number: 617-624-5220

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Textron Systems Corporation*

September 23, 2009

Date

Signature: 
Name (print): Carl G. Buzawa
Title: Sr. Vice President
Address: 201 Lowell St.
Wilmington, MA 01887

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

Name (print): Jamieson Schiff
Title: Director
Address: 40 Westminster St.
Providence, RI 02903
Ph. Number: 401.457.2422

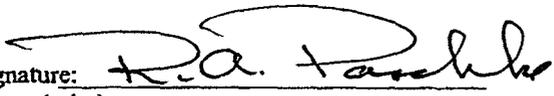
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Sutton Brook Disposal Area Superfund Site Consent Decree

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FOR 3M Company (f/k/a Minnesota Mining and Manufacturing Co.)

September 14 2009
Date

Signature: 
Name (print): Robert A. Paschke
Title: Manager, Corporate Environmental Programs
Address: 3M Center
Bldg. 224-2E-55
St. Paul, MN 55144-1000

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

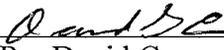
Name (print): Donald J. Camerson, II, Esq.
Title: Attorney
Address: Bressler, Amery & Ross, P.C.
325 Columbia Turnpike
Florham Park, NJ 07932
Ph. Number: 973-660-4433

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Sutton Brook Disposal Area Superfund Site Consent Decree

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For Town of Tewksbury *

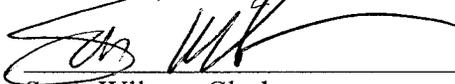

By: David Cressman

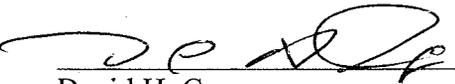
Name [print]: David Cressman
Title: Town Manager
Address: 1009 Main Street
Tewksbury, MA 02876

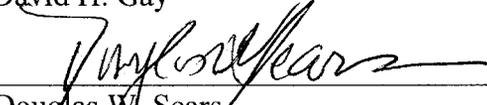
Town of Tewksbury Board of Selectman


Todd R. Johnson, Chairman


Anne Marie Stronach, Vice Chairman


Scott Wilson, Clerk


David H. Gay


Douglas W. Sears

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

Name (print): Matthew Donahue
Title: Attorney
Address: Eno, Bouley, Martin & Donahue
21 George St., 3rd Floor
Lowell, MA 01852
Ph. Number: (978) 452-8902 x113

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR TRW Automotive U.S. LLC.

9-11-09

Date



Signature:

Name (print): David L. Bialosky

Title: General Counsel

Address: 12001 Tech Center Drive
Livonia, MI 48154

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

Name (print): Scott D. Blackhurst

Title: Senior Counsel - Environment

Address: 12001 Tech Center Drive
Livonia, MI 48154

Ph. Number: 734-855-3195

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR TutorPerini Corporation *

Sept. 23, 2009
Date

Signature: 
Name (print): Robert Band
Title: President
Address: TutorPerini Corporation
73 Mt. Wayte Ave., Framingham, Ma. 01701

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

Name (print): CT Corporation
Title: _____
Address: 155 Federal Street
Suite 700

Boston, MA 02110
Ph. Number: _____

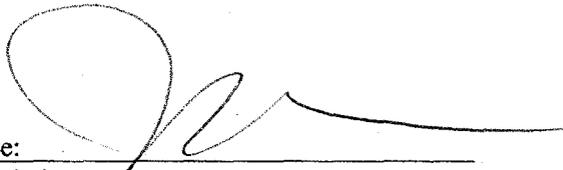
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Sutton Brook Disposal Area Superfund Site Consent Decree

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FOR Verizon New England, Inc. *

9/30/09
Date


Signature: _____
Name (print): Jacquie McCormick
Title: Director-Environmental Management
Address: Verizon
700 Hidden Ridge, HQW01J05
Irving, TX 75038

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

Name (print): Adam P. Kahn
Title: Attorney
Address: Foley Hoag LLP
155 Seaport Blvd.
Boston, MA 02210
Ph. Number: 617-832-1000

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Vishay Intertechnology, Inc. for itself and on behalf of its subsidiary Vishay BLH, Inc. f/k/a BLH ELECTRONICS, Inc. (a Delaware Corporation)

Date 9/30/09

Signature: William M. Clancy
Name (print): WILLIAM M. CLANCY
Title: SECRETARY
Address: 63 Lancaster Ave.
Malvern, PA 19355
USA

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

Name (print): Jean McCreary, Esq.
Title: _____
Address: Nixon Peabody, LLP
1100 Clinton Square
Rochester, NY 14604
Ph. Number: (585) 263-1611

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR W. R. Grace & Co. *

September 9, 2009
Date

Signature: 
Name (print): William M. Corcoran
Title: Vice President, Public & Regulatory Affairs
Address: W. R. Grace & Co.
7500 Grace Drive
Columbia, MD 21044

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

Name (print): The Prentice-Hall Corporation System, Inc.
Title: _____
Address: 2711 Centerville Road, Suite #400
Wilmington, DE 19808
Ph. Number: (302) 636-5401

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

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Waste Management Disposal Services of
Massachusetts, Inc., for itself and on behalf
of predecessor entity SCA Disposal Services
of New England, Inc. – Eastern Division

9/30/09
Date

Signature: 
Name: Stephen F. Joyce
Title: Director - CSMG
Address: Waste Management
4 Liberty Lane West
Hampton, NH 03842

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

Name: Roy P. Giarrusso
Title: Attorney
Address: Giarrusso Norton Cooley & McGlone, PC
Marina Bay
308 Victory Road
Quincy, MA 02171
Ph. Number: 617-770-2900

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

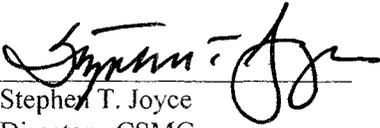
Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Waste Management of Massachusetts, Inc.,
for itself and on behalf of predecessor entity
V. Canelas Co., Inc.

9/30/09

Date

Signature: 

Name: Stephen T. Joyce

Title: Director - CSMG

Address: Waste Management
4 Liberty Lane West
Hampton, NH 03842

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

Name: Roy P. Giarrusso

Title: Attorney

Address: Giarrusso Norton Cooley & McGlone, PC
Marina Bay
308 Victory Road
Quincy, MA 02171

Ph. Number: 617-770-2900

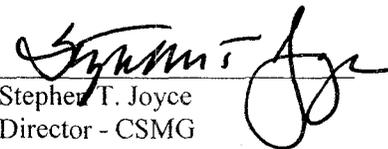
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Sutton Brook Disposal Area Superfund Site Consent Decree

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FOR Waste Management of New Hampshire, Inc.,
for itself and on behalf of predecessor entity
P&T Container Service Co., Inc.

9/30/09
Date

Signature: 
Name: Stephen F. Joyce
Title: Director - CSMG
Address: Waste Management
4 Liberty Lane West
Hampton, NH 03842

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

Name: Roy P. Giarrusso
Title: Attorney
Address: Giarrusso Norton Cooley & McGlone, PC
Marina Bay
308 Victory Road
Quincy, MA 02171
Ph. Number: 617-770-2900

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Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Zeneca, Inc., for itself and on behalf of predecessor entity
Polyvinyl Chemicals Inc., a/k/a Polyvinyl Chemical Industries

9/22/09
Date

Signature: 
Name (print): Luke W. Mette
Title: Vice President
Address: 1800 Concord Pike
FOP3
Wilmington DE 19850

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

Name (print): John A. Andreasen
Title: Attorney
Address: McGrath North Mullin & Kratz, PC LLO
First National Tower
1601 Dodge St., Ste. 3700 Omaha, NE 68102
Ph. Number: (402) 341-3070

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