

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

STATE OF DELAWARE,)
)
 Plaintiff,)
)
 v.)
)
 BP AMERICA, INC.,)
 THE BUDD COMPANY,)
 CHAMPLAIN CABLE CORPORATION,)
 CHRYSLER CORPORATION,)
 DAY INTERNATIONAL CORPORATION,)
 E.I. DU PONT DE NEMOURS, &)
 COMPANY, INC.)
 GEC INDUSTRIES, INC.,)
 GENERAL MOTORS CORPORATION,)
 HERCULES, INCORPORATED,)
 ICI AMERICAS INC.,)
 MOTOR WHEEL CORPORATION,)
 NEW CASTLE COUNTY, DELAWARE)
 SCA SERVICES, INC.,)
 STANDARD CHLORINE OF DELAWARE,)
 INC., STAUFFER CHEMICAL COMPANY,)
 WASTE MANAGEMENT of DELAWARE, INC.,)
 WESTVACO CORPORATION, and)
 WILMINGTON CHEMICAL CORPORATION,)
)
 Defendants.)

Consolidated
Civil Action Nos. _____

CONSENT DECREE

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 BP AMERICA, INC., et al.,)
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 BP AMERICA, INC., et al.,)
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 Defendants.)
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Consolidated
Civil Action Nos. _____
and, _____

CONSENT DECREE

INTRODUCTION

A. Whereas, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed this action pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607;

B. Whereas, the United States in its Complaint seeks: (i) abatement of an imminent and substantial endangerment to the

public health, welfare, and the environment; (ii) reimbursement of response costs incurred by EPA, together with accrued interest and costs of enforcement, for removal and remedial actions taken in response to the release or threat of release of hazardous substances from the Army Creek Landfill Superfund Site (the "Site") located in New Castle County, Delaware; (iii) a declaratory judgment under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and 28 U.S.C. § 2201, on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages, and (iv) damages for injury to, destruction of, or loss of natural resources under Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C);

C. Whereas, the State of Delaware ("State") on behalf of the Secretary of the Department of Natural Resources and Environmental Control ("DNREC") filed an action pursuant to 7 Del. C. Chapters 60, 63, and 90 for injunctive and other equitable relief to remedy a condition that may present an imminent and substantial hazard to the health of persons or the environment and, pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, for: (i) reimbursement of response costs incurred or to be incurred by the Department (as hereinafter defined) in response to a release or threat of release of hazardous substances from the Site, (ii) a declaratory judgment under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), as to liability for further response costs, and (iii) damages for injury to, destruction of,

or loss of natural resources under Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C);

D. Whereas, the United States and the State allege that hazardous substances as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and other pollutants or contaminants as defined by Section 101(33) of CERCLA, 42 U.S.C. § 9601(33), have been released and threaten to be released from the Site into the environment;

E. Whereas, for the purpose of entry and enforcement of this Consent Decree, the Settlers do not contest that the Complaint states a claim against the Settlers upon which relief may be granted.

F. Whereas, the Settlers (as hereinafter defined) deny any and all liability under any federal or state statute, regulation, or common law for any response costs incurred or to be incurred by the United States, or the State caused by the release or threat of release of hazardous substances from the Site;

G. Whereas, the United States, the State, and the Settlers agree that Settlement of this matter and entry of this Consent Decree are made in good faith in an effort to avoid expensive and protracted litigation;

H. Whereas, all parties to this Consent Decree consent to the entry thereof;

I. Whereas, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List,

("NPL"), set forth at 40 C.F.R. Part 300, Appendix B, 48 Fed. Reg. 40666 (September 8, 1983);

J. Whereas, the Site has been divided by the EPA into two operable units, Operable Unit One and Operable Unit Two (hereinafter defined);

K. Whereas, certain Settlers have participated in the funding and/or performance of the Remedial Investigation and Feasibility Study for Operable Unit One, pursuant to an Administrative Order on Consent, consistent with CERCLA and the National Contingency Plan ("NCP");

L. Whereas, EPA conducted the Remedial Investigation and Feasibility Study for Operable Unit Two;

M. Whereas, on September 30, 1986, the United States executed a Record of Decision ("ROD-1"), which is attached hereto as Exhibit 1, and which among other things requires that certain health and environmental threats posed by the Site be addressed by means of installation of a surface cap, gas venting system, appropriate erosion and sediment controls, and pumping of groundwater;

N. Whereas, on June 29, 1990, the United States executed a Record of Decision for Operable Unit Two ("ROD-2") which is attached hereto as Exhibit 2, and which, among other things, requires that certain health and environmental threats posed by the Site be addressed by treating the groundwater extracted by the recovery well network;

O. Whereas, various potentially responsible parties have been identified with regard to this Site and notified and requested to undertake the Remedial Action for Operable Unit One. Various potentially responsible parties were also offered the opportunity to conduct the Remedial Investigation and Feasibility Study and the Remedial Action for Operable Unit Two;

P. Whereas, the Settlers have submitted to EPA a good faith offer to undertake and complete the Remedial Action for Operable Unit One and Operable Unit Two;

Q. Whereas, in accordance with Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State prior to the negotiations with potentially responsible parties regarding the scope of the remedial design and the remedial action for the Site, and the State has participated in these negotiations;

R. Whereas, in accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA has notified federal natural resources trustees in the Department of Commerce and in the Department of the Interior of the settlement negotiations and the federal trustees have participated in these negotiations;

S. Whereas, subject to Section XXII (Claims Against the Fund and Payment of Response Costs), BP America, Inc.; The Budd Company; Champlain Cable Corporation (formerly Haveg Industries, Inc.); Chrysler Corporation; Day International Corporation (formerly Electric Hose & Rubber Company); E.I. duPont de Nemours & Company, Inc.; GEC Industries, Inc. (formerly Gates Engineering

Company, Inc.); General Motors Corporation; Hercules, Incorporated; ICI Americas Inc.; Motor Wheel Corporation; New Castle County, Delaware; SCA Services, Inc.; Standard Chlorine of Delaware, Inc.; Stauffer Chemical Corporation; Waste Management of Delaware, Inc.; Westvaco Corporation; and Wilmington Chemical Corporation, have agreed to undertake and complete the Remedial Actions selected by the Records of Decision for Operable Unit One and Operable Unit Two and to reimburse EPA a portion of its past response costs;

T. Whereas, the Settlers have entered into an agreement which includes a plan for allocation of costs among themselves to fund the Remedial Actions for Operable Units One and Two;

U. Whereas, the State has agreed to withdraw a Notice of Conciliation issued to the County, and therefore, the State enters into this Consent Decree with the understanding that the County will undertake expeditious construction of the treatment plant called for in ROD-2. The parties understand, subject to the timely entry of the Consent Decree, that "expeditious construction" means that the contract for construction will be awarded and the contractor will be issued a notice to proceed before December 31, 1990, and construction will be completed by June 30, 1992.

NOW THEREFORE, it is hereby ordered, adjudged, and decreed as follows:

I. JURISDICTION

A. This Court has jurisdiction over the subject matter of these actions pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b), and pendent jurisdiction over state law claims. The Court has personal jurisdiction over the Settlers, which, solely for the purposes of the Consent Decree and the underlying Complaints, waive all objections and defenses that they may have to the jurisdiction of the Court or to venue in this District.

II. PARTIES BOUND

A. This Consent Decree shall apply to and be binding upon the Parties to this Consent Decree and their respective successors and assigns. No change in corporate or ownership status shall change the Settlers' responsibility to comply with the terms and conditions of this Consent Decree. The undersigned representatives of the Settlers certify that they are fully authorized by the Party whom they represent to enter into the terms and conditions of this Consent Decree, to execute this Consent Decree, and to legally bind such Party to this Consent Decree.

B. With regard to the Prime Contractors and any subcontractor, laboratory or consultant retained to perform the Work required by this Consent Decree, the Settlers shall, prior to such retention, provide them a copy of the portions of this Consent Decree dealing with implementation of the remedial work and the standards and requirements related thereto and shall make

compliance with those terms of this Consent Decree a condition of any contract for such Work. The portions of the Consent Decree to be provided in compliance with this paragraph, shall be Sections IV (GENERAL PROVISIONS); VI (WORK TO BE PERFORMED) (only through Section B(2)); VII (IMPLEMENTATION OF WORK); IX (REPORTING REQUIREMENTS); XI (DESIGNATED REMEDIAL PROJECT MANAGER AND PROJECT COORDINATORS); XII (DATA QUALITY ASSURANCE) (only for contractors undertaking field sampling or laboratory analysis); XIV (SAMPLING AND DATA/DOCUMENT AVAILABILITY); XV (RECORD PRESERVATION); and XVII (FORCE MAJEURE).

III. DEFINITIONS

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

1. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.
2. "County" shall mean New Castle County, Delaware.
3. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Consent Decree, where the last day

would fall on a Saturday, Sunday, or federal holiday, the period shall run until the end of the next working day.

4. "DNREC" shall mean the Delaware Department of Natural Resources and Environmental Control.

5. "EPA" shall mean the United States Environmental Protection Agency.

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

7. "Operation and Maintenance" or "O & M" shall mean those activities taken to maintain the effectiveness of the remedial measures implemented pursuant to this Consent Decree. O & M shall not include the pumping and treating of groundwater for a period of ten (10) years after commencement of operation of the treatment facility.

8. "Operable Unit One" shall mean that aspect of the Site to be addressed by the remedy selected by ROD-1. Operable Unit One shall not mean that aspect of the Site to be addressed by the remedy selected for Operable Unit Two.

9. "Operable Unit Two" shall mean that aspect of the Site to be addressed by the remedy selected by ROD-2.

10. "Oversight" shall mean all acts not inconsistent with the NCP related to Work-1 and Work-2 undertaken by EPA, its contractors, subcontractors, and/or agents to assure and confirm performance by the Settlers of all the Settlers' duties and

obligations under and pursuant to this Consent Decree in the implementation of Work-1 and Work-2.

11. "Parties" shall mean the United States, the State and the Settlers.

12. "Prime Contractor" shall mean the company or companies (including any substitute) selected by and retained on behalf of the Settlers in accordance with Section VI (WORK TO BE PERFORMED) of this Decree to undertake and complete the Work (as hereinafter defined). The Prime Contractor and any subcontractor retained by the Prime Contractor shall be deemed to be related by contract to each of the Settlers within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). The Prime Contractor and any subcontractor retained by the Prime Contractor shall be qualified to perform those portions of the Work for which they have been retained; provided, however, that the United States reserves the right to disapprove any such Prime Contractor in accordance with Section VI (WORK TO BE PERFORMED) hereof.

13. "Private Settlers" shall mean all Settlers except for the County.

14. "Record of Decision-1" or "ROD-1" shall mean the Record of Decision selecting remedial action for Operable Unit One signed by the Regional Administrator of EPA Region III on September 30, 1986.

15. "Record of Decision-2" or "ROD-2" shall mean the Record of Decision selecting remedial action for Operable Unit

Two signed by the Regional Administrator of EPA Region III on June 29, 1990.

16. "Response Costs" shall mean all costs of response as "response" is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), including the administrative, litigation and oversight costs, as well as the costs of preliminary assessments, site identifications, remedial investigations, and feasibility studies, incurred or to be incurred in response to releases or threatened releases of hazardous substances at or from the Site.

17. "Scope of Work-1" or SOW-1 shall mean the description of Work-1 as set forth in Exhibit 3 annexed hereto.

18. "Scope of Work-2" or SOW-2 shall mean the description of Work-2 as set forth in Exhibit 4 annexed hereto.

19. "Settlers" shall mean BP America, Inc.; The Budd Company; Champlain Cable Corporation; Chrysler Corporation, Day International Corporation, E.I. duPont de Nemours & Company, Inc.; GEC Industries, Inc.; General Motors Corporation; Hercules, Incorporated; ICI Americas, Inc.; Motor Wheel Corporation; New Castle County, Delaware; SCA Services, Inc.; Standard Chlorine of Delaware, Inc.; Stauffer Chemical Company; Waste Management of Delaware Inc.; Westvaco Corporation; and Wilmington Chemical Corporation, and their respective successors and assigns. The provisions of this Consent Decree set forth in Section XXI (COVENANT NOT TO SUE) and Section XXV (CONTRIBUTION PROTECTION) shall apply to Settlers whose acts or omissions gave rise to the alleged liability for CERCLA and State law claims pertaining to

the Site and those persons and entities whose acts or omissions gave rise to the alleged liability of Settlers for CERCLA and State law claims pertaining to the Site, including with respect to both, those which were or are predecessors, successors, assigns, purchasers, sellers, affiliates, parents, subsidiaries, officers, directors, agents, and employees of Settlers and such persons and entities.

20. "Site" shall mean the "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and 40 C.F.R. § 300.6, known as the Army Creek Landfill Superfund Site, consisting of no less than 60 acres, located in New Castle County, Delaware, approximately two miles southwest of New Castle, Delaware, adjacent to Routes 13 and 40 to the west and Route 9 to the east. The Site includes the Property referred to under Section XIII (SITE ACCESS) and the groundwater affected by the release of hazardous substances from the Army Creek Landfill Superfund Site and/or the Delaware Sand and Gravel Landfill Superfund Site. The Site does not include any soils at the Delaware Sand and Gravel Landfill Superfund Site and any response action related thereto, or any other portion (other than groundwater) of the Delaware Sand and Gravel Landfill Superfund Site.

21. "State" shall mean the State of Delaware, including the Department of Natural Resources and Environmental Control (DNREC).

22. "Technical Steering Committee" shall mean the entity, comprised of certain Settlers or their representatives, selected by the Settlers to perform certain functions regarding Work-1 and Work-2, which functions are defined in a separate agreement among the Settlers. Within fifteen (15) days after the entry of this Consent Decree, the Settlers shall notify the United States of the identity of the members of the Technical Steering Committee, and the Committee members' addresses and telephone numbers. Notwithstanding any delegation of duties to the Technical Steering Committee, the Settlers shall not be relieved of the responsibility to assure full and proper performance of their obligations set forth in this Consent Decree.

23. "Trust Fund" shall mean the fund into which, by contractual agreement, the Settlers have each agreed to pay the amount necessary to pay for the implementation and completion of the Work to be performed under this Consent Decree.

24. "United States" shall mean the United States of America, including all departments, divisions, agencies, independent boards and administrations of the federal government.

25. "Work" shall mean all activities the Settlers are required to perform under this Consent Decree in implementing Work-1 and Work-2. Work shall also mean remedial action as defined in CERCLA 101(24), 42 U.S.C. § 9601(24).

26. "Work-1" shall constitute all tasks to implement the remedial action called for in ROD-1, excluding pumping of

groundwater but including operation and maintenance, as more specifically described in Scope of Work-1, the Work Plans, and any plans or schedules attached or to be attached thereto. For purposes of Section XXII, (CLAIMS AGAINST THE FUND AND PAYMENT OF RESPONSE COSTS), however, "Work-1" shall not include expenses related to the operation and maintenance of the remedial action set forth in ROD-1.

27. "Work-2" shall constitute all tasks to implement the remedial action called for in ROD-2, as well as the pumping of groundwater called for in ROD-1 and including operation and maintenance, as more specifically described in Scope of Work-2, the Work Plans, and any plans or schedules attached or to be attached thereto. For purposes of Section XXII, (CLAIMS AGAINST THE FUND AND PAYMENT OF RESPONSE COSTS), however, Work-2 shall not include expenses related to operation and maintenance of the remedial action set forth in ROD-2. The parties understand that for purposes of claims against the Fund, ten (10) years of pumping and treating after commencement of operation of the treatment facility is considered remedial action and not operation and maintenance.

28. "Work Plans" shall mean the documents, approved by EPA, which specifically describe the Work (including O & M) to be performed by the Settlers in order to fulfill the United States' objectives through the implementation of the remedies selected by ROD-1 and ROD-2. There will be a separate Work Plan for Operable Unit One and Operable Unit Two. The Work Plan for Operable Unit

One shall be consistent with the Scope of Work-1 and once approved by EPA, shall be incorporated into this Consent Decree by reference as Exhibit 5. The Work Plan for Operable Unit Two shall be consistent with the Scope of Work-2 and once approved by EPA shall be incorporated into this Consent Decree by reference as Exhibit 6.

IV. GENERAL PROVISIONS

A. Objectives of the Parties

The objectives of the parties in entering into this Consent Decree are to protect public health and welfare and the environment from releases or threatened releases of hazardous substances from the Site by the investigation, development, design and implementation of the remedies selected by ROD-1 and ROD-2 and reimbursement of EPA's response costs.

B. Obligations of Settlers

1. Settlers shall finance and perform the Work in accordance with this Consent Decree, including the SOW-1 and SOW-2 and all standards, specifications, and schedules set forth therein or developed thereunder, and in a manner consistent with the ROD-1 and ROD-2. Settlers shall also reimburse the United States for Past Response Costs and Oversight Costs as provided in this Consent Decree.

2. The obligations of the Settlers under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more of the Settlers to implement the

requirements of this Consent Decree, the remaining Settlers shall complete all such requirements.

C. Compliance With Applicable Law

1. All actions taken by the Settlers pursuant to this Consent Decree shall be performed in accordance with the requirements of CERCLA and the National Contingency Plan.

D. Permits

1. As provided in Section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the Work conducted entirely on the Site. Where any portion of the Work requires a federal, State or local permit or approval under CERCLA and the NCP, the Settlers shall timely submit applications and take all other actions necessary to obtain all such permit approvals.

2. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or State statute or regulations.

V. TRUST FUND

A. Prior to the execution of this Consent Decree, the Settlers executed a Management Agreement establishing the Trust Fund for Work-1.

B. Settlers shall make payments to the Trust Fund in accordance with the terms of their agreement. Such payment by each of the Settlers is not a fine or penalty.

C. In the event the cost of Work-1 exceeds the amount allocated for Work-1 and paid to the Trust Fund under this

Section V (TRUST FUND), the Technical Steering Committee shall provide timely written notice to the Settlers and EPA, and the Settlers shall make additional payments to the Trust Fund in accordance with their agreement, to ensure the uninterrupted progress of the Work-1.

D. Any Settlor that fails to make payments required by this Consent Decree shall become a "Defaulting Defendant." In the event that any of the Settlers becomes a Defaulting Defendant, the remaining Settlers shall make additional payments to the Trust Fund in an amount at least equal to the amount to be paid by the Defaulting Defendant(s) in accordance with their agreement, and ensure the uninterrupted progress of the Work. Nothing set forth herein shall be construed to limit the rights of other Settlers to compel such Defaulting Defendant to satisfy its obligations with respect to matters addressed in this Consent Decree.

E. The purpose of this Section V (TRUST FUND) is specifically to provide for and recognize the existence of a binding agreement among the Settlers which shall assure the necessary funding for activities undertaken by the Settlers pursuant to this Consent Decree. The Parties hereby expressly recognize that the Management Agreement is a separate and distinct document which is binding only as among the Settlers.

F. No terms or conditions in the Settlers' Management Agreement shall be binding upon the United States or the State.

G. Under the Management Agreement, defendants Chrysler Corporation, Day International Corporation, GEC Industries, Inc., General Motors Corporation, Standard Chlorine of Delaware, Inc., Westvaco Corporation and Wilmington Chemical Corporation shall fully satisfy their obligations to the other Settlers relating to the Work and this Consent Decree by making a single premium payment to the Trust Fund, and shall not be involved in or responsible to the other Settlers for actual implementation of the Work. Nothing contained herein shall alter the terms and conditions of the Management Agreement.

H. Under the Management Agreement, defendants Hercules, Incorporated, Champlain Cable Corporation, Motor Wheel Corporation and The Budd Company shall not be involved in or responsible to the other Settlers for the actual implementation of the Work. Nothing contained herein shall alter the terms and conditions of the Management Agreement.

I. Except for the Stipulated Penalties provisions set forth in Section XVI (STIPULATED PENALTIES), the obligations imposed upon all Settlers under this Consent Decree shall be joint and several.

VI. WORK TO BE PERFORMED

A. Selection of Prime Contractors

1. The Settlers shall, within sixty (60) calendar days of approval of the respective Work Plans, notify the United States of the name, title and qualifications of the Prime Contractors for Work-1 and Work-2. It is anticipated that there will be

different Prime Contractors for Work-1 and Work-2, and the following provisions shall apply separately to such Prime Contractors. The United States retains the right to disapprove the Prime Contractors initially proposed and any substitute Prime Contractors subsequently proposed if it determines that any such Prime Contractors are not qualified or are otherwise unable to perform those portions of the Work for which they have been retained, provided that the acceptance of the United States shall not be unreasonably withheld. The United States shall notify the Settlers of its disapproval or acceptance of the Prime Contractor and the reason(s) therefor within fourteen calendar days following receipt of such notice of the identity of the proposed Prime Contractor. In the event of disapproval of the Prime Contractor, the Settlers shall notify the United States within forty-five (45) calendar days of the receipt of notice of disapproval, of the name, title and qualifications of the Prime Contractor who will replace the one who was disapproved, or the Settlers, or any one or more of them may initiate Dispute Resolution pursuant to Section XVIII (DISPUTE RESOLUTION) hereof. If Dispute Resolution is invoked and EPA's decision to disapprove is sustained, Settlers shall name a substitute Prime Contractor within forty-five (45) days of receipt of notice that EPA's decision was sustained. The Settlers shall within sixty (60) calendar days of acceptance of the Prime Contractor, enter into an agreement with that Prime Contractor to perform the Work. Prior to execution of this Consent Decree, the County may submit

to EPA a list of contractors to be invited to bid as Prime Contractor for Work-2. In such event, the provisions of this Section VI(A)(1) (WORK TO BE PERFORMED) shall apply to EPA's acceptance process for any such Prime Contractor.

2. The United States and the State shall not be considered a party to any contract between or among the Settlers, Prime Contractors, and/or any subcontractors retained to perform the Work. If, at any time during the pendency of this Decree, a decision is made to retain a substitute Prime Contractor, selection of the substitute shall be governed by the provisions of this Section.

a) Within 60 calendar days of the date on which any Prime Contractor is accepted, the Settlers shall submit to EPA the names of the subcontractors selected to perform any Work to be performed under such Prime Contractor.

3. EPA retains the right to disapprove any subcontractors selected to perform the Work, and any subcontractor selected to replace any such subcontractors that EPA has disapproved, if it reasonably determines that any such subcontractor is not qualified or otherwise unable to perform those portions of the work for which it has been retained, provided that the acceptance of EPA shall not be unreasonably withheld. The EPA shall notify the Settlers of its disapproval of any subcontractor and the reason(s) therefor within fourteen days following receipt of notice of such subcontractor, or such subcontractor shall be deemed accepted. Within forty-five calendar days of the receipt

of any notice of disapproval, Settlers shall notify the United States of the name and qualifications of a replacement subcontractor, or Settlers, or one or more of them, may initiate Dispute Resolution pursuant to Section XVIII (DISPUTE RESOLUTION) hereof. If Dispute Resolution is invoked and EPA's decision to disapprove is sustained, Settlers shall name a replacement subcontractor within forty-five days of receipt of notice that EPA's decision was sustained.

4. Paul C. Rizzo and Associates is accepted as Private Settlers' engineering firm and construction manager. Roy F. Weston, Inc. is accepted as the County's engineering firm and construction manager. Their professional subcontractors, such as surveyors, drillers, and electricians shall not require separate review.

B. Insurance

1. The Settlers shall require each of the Prime Contractors to purchase and maintain in force insurance policies to fully protect the United States and the public against liability arising out of the acts or omissions of Prime Contractors and any subcontractor, agent, or employee retained to perform the Work. For each prime contractor, said policies shall provide coverage in amounts not less than those specified below:

a. Workmen's Compensation and Employer's Liability Insurance in accordance with the laws of the State of Delaware;

b. Comprehensive General Liability Insurance,
including;

(1) Bodily Injury Liability

\$1,000,000 each
person
\$1,000,000 each
occurrence

(2) Property Damage Liability

\$1,000,000 each
accident
\$1,000,000
aggregate

c. Automobile Liability Insurance;

(1) Bodily Injury Liability

\$500,000 each
person
\$1,000,000 each
accident

(2) Property Damage Liability

\$500,000 each
accident

d. Umbrella Policy in the amount of \$2,000,000 which shall provide coverage in excess of the underlying coverage described above.

2. Ten (10) days prior to the commencement of the Work, the Settlers, through the Prime Contractors, shall provide the United States with copies of all policies of insurance.

3. In the event the Prime Contractors are unable to obtain such insurance after using best efforts the Settlers shall give EPA written notice delineating the best efforts made by the Prime Contractors. Such failure to obtain or maintain any insurance required by this Section shall not be a violation of this Consent Decree if Settlers demonstrate to EPA's satisfaction

that good faith efforts were made to obtain such insurance and that such insurance is not available at reasonable cost.

4. The Settlers shall indemnify the United States and hold the United States harmless for any claim arising from any injuries or damages to persons or property resulting from any acts or omissions of the Settlers, their contractors, subcontractors, or any person acting on their behalf in carrying out any activities pursuant to the terms of this Consent Decree. The foregoing shall not include any officer, employee, agent, contractor, subcontractor or any other person acting on behalf of the United States or any agency or department thereof. Nothing in this Section is intended in any way to expand or increase any liability of the United States, its agents or employees, under existing law or to alter or affect any rule of law that would govern the liability of the United States in the absence of this Consent Decree.

C. Performance Standards

1. The Work performed by Settlers under this Consent Decree for Operable Unit One shall achieve the performance standards selected in ROD-1, attached hereto and incorporated herein as Exhibit 1, as set forth in SOW-1, attached hereto and incorporated herein as Exhibit 3. The Work performed by Settlers under this Consent Decree for Operable Unit Two shall achieve the performance standards selected in ROD-2, attached hereto and incorporated herein as Exhibit 2, as set forth in SOW-2, attached hereto and incorporated herein as Exhibit 4. The performance

standards selected by ROD-1 and ROD-2 shall be incorporated into the appropriate Work Plans.

2. Settlers acknowledge and agree that nothing in this Consent Decree or in the Work Plans constitutes a warranty or representation of any kind by the United States that compliance with this Consent Decree will achieve the Performance Standards set forth in ROD-1 and ROD-2 and in Section VI(C)(1) (WORK TO BE PERFORMED), above, and that compliance with the Consent Decree shall not foreclose the United States from seeking achievement of the applicable Performance Standards.

3. In the event that EPA or the Settlers determine(s) that additional response activities are necessary to meet the Performance Standards described in paragraph 1, notification of such additional response activities shall be provided to EPA's Remedial Project Manager or to Settlers' Project Coordinators.

4. Any additional response activities that the Settlers determine are necessary to meet Performance Standards shall be subject to approval by EPA, after reasonable opportunity for review and comment by the State, and shall be completed by the Settlers in accordance with plans, specifications and schedules approved by EPA pursuant to Section VII (IMPLEMENTATION OF WORK).

5. Unless otherwise stated by EPA to be a larger period, within thirty (30) days of receipt of notice from EPA that additional response activities are necessary to meet the Performance Standards, the Settlers shall submit for approval by

EPA, after reasonable opportunity for review and comment by the State, a work plan for additional response activities. Upon approval of the plan pursuant to Section VII (IMPLEMENTATION OF WORK), the Settlers shall implement the plan for additional response activities in accordance with the schedule contained therein. This subsection does not apply to additional response actions required by Section XXI(F) (COVENANT NOT TO SUE).

VII. IMPLEMENTATION OF WORK

A. Within thirty (30) days after notification from EPA of the lodging of this Consent Decree with the Court, the Settlers shall submit their preliminary draft Work Plans to EPA and the State. The Settlers shall revise their Work Plans consistent with SOW-1 and SOW-2, in accordance with any comments made by EPA and the State. Within thirty (30) days after the Settlers receive notice that this Consent Decree has been entered by the Court, the Settlers shall submit their final Work Plans to EPA and the State. The Work Plans shall provide for design of the remedy set forth in ROD-1 and ROD-2, in accordance with SOW-1 and SOW-2. A Health and Safety Plan for field design activities shall be prepared in conformance with applicable Occupational Safety and Health Administration and EPA requirements, and incorporated into the Work Plans. EPA shall review the Work Plans for consistency with ROD-1 and ROD-2, in accordance with SOW-1 and SOW-2, and notify the Settlers in writing of EPA's approval or disapproval of the Work Plans. In the event of EPA's disapproval, EPA shall specify the deficiency(ies) of each Work

Plan, if any, in writing. Within fourteen (14) days of the receipt of such notice of disapproval, Settlers shall submit revised Work Plans which correct such deficiencies. The Settlers may, if they wish, submit further information to EPA during the fourteen (14) day period giving reasons why the original Work Plans should be approved; however, such submission shall not change the obligation of the Settlers to submit revised Work Plans within the fourteen (14) day period should EPA not reverse its decision. Subsequent EPA disapprovals shall be subject to the terms of Section XVIII (DISPUTE RESOLUTION) of this Consent Decree.

B. Upon approval by EPA, the Settlers' Work Plans shall be incorporated into this Consent Decree. The terms and schedules in the Work Plans shall become requirements of this Consent Decree.

C. Subject to Section XIII (SITE ACCESS) of this Consent Decree, the Settlers shall commence the Work no later than ninety (90) days from the date of receipt of EPA's acceptance of the Prime Contractors to perform the work under each Work Plan. The Work shall be completed in accordance with the standards, specifications, and the schedule of completion set forth in the EPA-approved Work Plans. Failure to comply with any provision of the schedules and milestones in the Work Plans shall subject the Settlers to the imposition of stipulated penalties as set forth in Section XVI (STIPULATED PENALTIES) of this Consent Decree.

D. The Parties agree that the Work and any schedule of completion may be modified by written agreement of the Parties hereto which agreement shall be filed with the Court, except that the EPA Remedial Project Manager may make minor modifications which may affect interim, but not final, deadlines for work to be performed under this Decree. However, minor modifications are those changes which do not materially alter the requirements of this Consent Decree. No informal advice, guidance, suggestions, or comments, including, but not limited to, oral representations, made by EPA or the State regarding reports, plans, specifications, schedules, or any other writing submitted by the Settlers shall be construed as relieving the Settlers of their obligation to obtain such formal approval as may be required by this Consent Decree.

E. The Settlers shall maintain documentation, consistent with the NCP, 40 C.F.R. § 300.69, or any amendments thereto, to support all actions taken in performing the Work. The Settlers shall provide written progress reports to the EPA Remedial Project Manager as required by this Consent Decree and the Work Plans, containing the information therein required.

F. If a progress or monitoring report, as required by Section IX(A) (REPORTING REQUIREMENTS), submitted to EPA is deficient, EPA shall notify the appropriate Project Coordinator within ninety (90) days of receipt of such progress or monitoring report by EPA. The notice shall include a description of the deficiencies. Within fourteen (14) days of receipt by the

Settlors of a notice of deficiency in a progress or monitoring report, the Settlers shall make the necessary changes and resubmit the progress or monitoring report to the EPA Remedial Project Manager. The Settlers may, if they wish, submit further information to EPA during the fourteen (14) day period giving reasons why the original progress or monitoring report should be approved; however, such a submission shall not change the obligation of the Settlers to resubmit the progress or monitoring report within the fourteen (14) day period should EPA not reverse its decision.

G. The Settlers shall notify the United States orally and in writing within two working days of the completion of all of the elements set forth in each Work Plan. The United States shall review the Work and indicate its agreement or disagreement as to the satisfactory completion of the Work within a reasonable time of (1) receipt of such notice or (2) receipt of all sampling data required to be submitted to EPA under the Work Plans, whichever is later.

H. If the United States believes that Work-1 and/or Work-2 has not been satisfactorily completed in accordance with the Work Plans, it shall notify the Settlers, in writing, of what must be done to complete the Work, referencing the specific portion(s) of the Work Plans and proposing a schedule of completion. Thereafter, the Settlers shall either (1) undertake and complete such measures in accordance with the proposed schedule of completion, or, if the Settlers object to such proposed measures,

(2) within five working days of receipt of the United States' notification, initiate the dispute resolution procedures of Section XVIII (DISPUTE RESOLUTION) of this Consent Decree.

I. In the event the United States determines, at any time, that there have been violations of the terms of this Consent Decree and the United States has previously notified the Settlers or the appropriate Project Coordinator in writing of such violations, and the Settlers have failed to remedy such noncompliance with the terms of this Consent Decree, then the United States, may perform such portions of the Work as EPA determines it wishes to undertake and seek to recover the costs thereof from the Settlers. The United States shall give the Settlers at least fourteen days written notice of its intent to undertake the Work. The United States' right to perform portions of the Work under this paragraph is in addition to and not in limitation of the United States' right to take any other action under law, including, but not limited to, enforcing the terms of this Consent Decree. Further, the provisions of this Consent Decree shall not limit EPA in any way in taking action at the Site in the event of an imminent and substantial endangerment to the public health or welfare or the environment.

VIII. U.S. EPA PERIODIC REVIEW

A. At least every five years after initiation of the remedial action (Work) at the Site, EPA shall review the remedial action as required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c). The Settlers shall in connection with such reviews make

available the studies and investigations in their possession as well as such analysis thereof, as determined necessary by EPA.

B. The Settlers shall be provided with an opportunity to confer with EPA on any additional response action proposed by EPA as a result of the 5-year review process and to submit written comments for the record during the public comment period. After the period for submission of written comments is closed, the Regional Administrator, EPA Region III, shall determine in writing whether further response action is appropriate. If the Regional Administrator, EPA Region III, determines that the remedial action is not protective of human health and the environment, based upon information received, in whole or in part, during the review conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), the Settlers shall, subject to Section XXI(F) (COVENANT NOT TO SUE) of this Consent Decree, undertake the response actions that EPA has determined are appropriate.

IX. REPORTING REQUIREMENTS

A. The Private Settlers and the County shall each submit to EPA and the State written monthly progress reports regarding Work-1 and Work-2, respectively, which: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include all sampling and tests and all other data, including all raw data, generated by the Settlers or their contractors or agents in the previous month; (c) include all plans and procedures completed

under the Work Plans during the previous month; (d) describe all actions, including data collection and implementation of plans which are scheduled for the next month and provide other information relating to the progress of construction; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work or Work Plans, and a description of efforts made to mitigate those delays or anticipated delays. The Settlers shall submit these progress reports to EPA and the State by the tenth day of every month following the entry of this Consent Decree.

B. With respect to the discharge of recovered groundwater from the County's treatment facility the County shall submit to the State discharge monitoring reports (DMRs) in accordance with the requirements set forth in SOW-2.

C. Upon the occurrence of any event during performance of the Work which, pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, requires reporting to the National Response Center, Settlers shall promptly orally notify the EPA Remedial Project Manager or in the event of the unavailability of the Remedial Project Manager, the Emergency Response Section, Region III, United States Environmental Protection Agency, in addition to the reporting required by Section 103. Within twenty (20) days of the onset of such an event, Settlers shall furnish to the United States a written report, signed by the appropriate Project Coordinator, setting forth the events which occurred and the

measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, the Settlers shall submit a report setting forth all actions taken to respond thereto.

X. NOTICES

Whenever under the terms of this Consent Decree notice is required to be given or a report or other document is required to be forwarded by one Party to another, it shall be directed, in writing, to the following individuals at the addresses specified below (or to such other address as such Party may, from time to time, designate by written notice):

1. If to the United States or EPA:
 - a. Remedial Project Manager
Army Creek Landfill Site
U.S. EPA Region 3
841 Chestnut Building
Philadelphia, PA 19107
 - b. Assistant Regional Counsel
Army Creek Landfill Site
Office of Regional Counsel
841 Chestnut Building
Philadelphia, PA 19107
 - c. Chief, Environmental Enforcement Section
U.S. Department of Justice
P. O. Box 7611 Ben Franklin Station
Washington, D.C. 20044
DOJ Ref. No. 90-11-2-411
2. If to the State:
 - a. Robert M. Allen
Department of Natural Resources
and Environmental Control
715 Grantham Lane
New Castle, DE 19720

b. Jeanne L. Langdon
Deputy Attorney General
State of Delaware
Department of Natural Resources
and Environmental Control
89 Kings Highway
Dover, DE 19903

c. Water Pollution Control Branch
State of Delaware
Department of Natural Resources
and Environmental Control
Division of Water Resources
P.O. Box 1401
Dover, DE 19903

3. If to the Settlers:

a. F. Michael Parkowski, Esquire
116 West Water Street
Post Office Box 598
Dover, DE 19903

b. New Castle County Attorney
County Department of Law
City-County Building
800 French Street, 8th Floor
Wilmington, DE 19801

XI. DESIGNATED REMEDIAL PROJECT MANAGER
AND PROJECT COORDINATORS

A. The United States has selected or will select a Remedial Project Manager for this Site whose business address is listed in Section X (NOTICES) of this Decree. Within ten (10) days after the entry of this Consent Decree, the Settlers shall notify the EPA Remedial Project Manager, in writing, of the name, address, and telephone number of their Project Coordinators. EPA and the Settlers shall have the right to change their respective Remedial Project Manager and Project Coordinators. Such a change shall be accomplished by notifying the other Parties in writing at least five (5) days prior to the change. It is anticipated

that the Private Settlers will have a Project Coordinator for Work-1 and that the County will have a Project Coordinator for Work-2.

B. The EPA Remedial Project Manager and his designated representatives shall have the authority lawfully vested in the Remedial Project Manager and the On-Scene Coordinator by the applicable provisions of the NCP, 40 C.F.R. Part 300.

C. The EPA Remedial Project Manager has the right to suspend the Work if the Work is not being performed in accordance with this Consent Decree or if the Work causes or threatens to cause a release or threatened release of hazardous substances which may create an imminent and substantial endangerment to human health and the environment. If the Work is suspended, Settlers may file an emergency petition for expedited Dispute Resolution. If the EPA Remedial Project Manager suspends any Work and the reasons are due to the acts or omissions of the Settlers or acts or omissions of the Prime Contractors or subcontractors, then any extension of the schedule of completion shall be at EPA's discretion, exercised in good faith.

D. Minor modifications in the studies, techniques, procedures, designs or interim deadlines utilized in carrying out this Consent Decree, and necessary to the completion of Work-1 or Work-2 may be made by mutual agreement of the EPA Remedial Project Manager, and either the County's or the Private Settlers' Project Coordinator, as appropriate. Such modifications shall be made by exchange of letters agreeing to such changes and shall

have as an effective date the date on which the letter from EPA's Remedial Project Manager is signed. The absence of the EPA Remedial Project Manager or his representatives from the Site shall not be cause for the stoppage of Work.

XII. DATA QUALITY ASSURANCE

A. The Private Settlers and the County shall use Quality Assurance/Quality Control practices and procedures, including chain-of-custody procedures, in accordance with guidance provided in "EPA NEIC Policies and Procedures Manual" dated May 1978, revised November 1984, EPA 330/9-78-001-R and "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," December 1980, QAMS-005/80, while conducting all sample collection and analysis activities required by this Consent Decree. The Private Settlers and the County shall consult with the EPA Remedial Project Manager in planning for, and prior to, all sampling and analysis required by the Work Plans, and subsequent EPA-approved plans prepared as part of this Consent Decree. In order to provide adequate Quality Assurance and Quality Control regarding all samples collected and analyzed pursuant to this Consent Decree, the Private Settlers and the County shall:

1. Use only laboratories which have a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80;
2. Ensure that United States personnel and/or United States authorized representatives are allowed reasonable access

to laboratories, records, and personnel utilized by the Private Settlers and the County for analysis of samples collected pursuant to this Consent Decree;

3. Submit a Quality Assurance and Quality Control Plan ("QA/QC Plan") for the collection, transportation, analysis and reporting to be conducted, as appropriate, during the Work undertaken pursuant to this Consent Decree. The QA/QC Plan shall be submitted to the EPA Remedial Project Manager for review and approval in accordance with the schedule to be included in Work-1 and Work-2 and prior to initiating any respective field investigations to be described in the respective QA/QC Plan. EPA shall review the QA/QC Plan and notify the Settlers in writing of EPA's approval or disapproval of the QA/QC Plan. Within fourteen (14) days of receipt of any notice of disapproval, the Private Settlers and/or the County (as appropriate) shall submit a revised QA/QC Plan which addresses such deficiencies. Each plan shall specify, for the phase of activity addressed, the data quality objectives, the number, time and location of soil, air, surface water and groundwater samples to be taken, sample collection and transportation procedures, data analysis methods, and validation and reporting procedures that are consistent with the ROD, EPA NEIC Policies and Procedures Manual, QAMS-005/80, and appropriate EPA guidance;

4. Ensure, except where otherwise specified in subsequent EPA-approved plans prepared as part of this Decree, that the laboratory(ies) analyzing samples required by this Consent Decree

shall use the methods and submit deliverables delineated in the current "Statement of Work of the EPA Contract Lab Program" ("CLP"). Analysis for all constituents and physical parameters in which CLP methods will not be used shall be described in detail in the appropriate QA/QC Plan and approved by the EPA Remedial Project Manager prior to all sampling and analysis;

5. Ensure that any laboratory analyzing samples pursuant to this Consent Decree demonstrate its capability to perform analysis throughout Work in compliance with CLP requirements through the periodic analysis of Performance Evaluation ("PE") samples. EPA may waive this requirement to analyze PE samples provided the laboratory periodically analyzes PE samples submitted by EPA or a state agency and documentation of periodic PE sample analysis is submitted to the EPA Remedial Project Manager for verification in accordance with the schedule to be included in the Work Plan;

6. Conduct an appropriate number of field audits, to be described in the QA/QC Plan, during Work to verify that sampling is being performed according to the QA/QC Plan. The Private Settlers and the County shall submit a report to the EPA Remedial Project Manager within fifteen (15) days of completion of each audit. The Private Settlers and the County agree to report deficiencies in implementation of the QA/QC Plan and propose corrective actions within twenty-four hours of the time the any of the Settlers or any contractor or subcontractor discover any

deficiency. The Settlers agree to take immediate action to correct any deficiency.

7. Conduct, in accordance with the QA/QC Plan, an appropriate number of audits of the laboratories that will analyze samples from the Site at a frequency to be specified in the respective Work Plans during the time the laboratories are conducting analyses. The audits shall be conducted to verify analytical capability. Audit reports shall be submitted to the EPA Remedial Project Manager within fifteen (15) days of completion of each audit. The Private Settlers and the County agree to report deficiencies within twenty-four hours of the time that any of the Settlers discover the deficiency. The Private Settlers and the County agree to make their best efforts to take corrective actions immediately. Laboratories which are CLP labs need not be audited if the CLP procedures are employed by the Private Settlers and the County;

8. Provide data validation of analyses performed by the laboratory(ies) in accordance with the "Functional Guidelines for Data Review" for data derived by CLP methods, or if another method is used, the data validation shall be performed in accordance with the QA/QC data validation criteria set forth in that method. For methods lacking QA/QC data validation protocols, the Private Settlers and the County must establish validation criteria such as those in Section 8 of the EPA Series Methods in 40 C.F.R. Part 136. The Private Settlers and the County agree to submit the appropriate quality assurance data

validation summary reports, along with sample data and summary sheets, to the EPA Remedial Project Manager in accordance with reporting requirements to be described in the Work Plans.

XIII. SITE ACCESS

A. The County, which owns or controls access to certain portions of the properties constituting the Army Creek Landfill Site (such areas referred to hereinafter as the "Property"), is hereby ordered and hereby agrees:

1. To permit the United States, its representatives or its contractors, the State, its representatives or its contractors, the Private Settlers, the Technical Steering Committee, Prime Contractors, subcontractors and their respective representatives to enter upon the Property for the purpose of effectuating all terms of this Consent Decree;

2. Not to interfere with or disturb the Work to be performed under this Consent Decree by the Private Settlers or alter the remedial facilities constructed by the Private Settlers pursuant to this Consent Decree;

3. Not to convey any title, easement, or other interest in the Property or any portion thereof, unless such conveyance includes a covenant that: (i) permits the United States, its representatives or its contractors, the State, its representatives or its contractors, Private Settlers, the Technical Steering Committee, Prime Contractors, subcontractors and their respective representatives to enter upon the Property or portions thereof conveyed, for purposes of effectuating all

terms of this Consent Decree; (ii) contains a binding agreement not to interfere with or disturb the Work and any future response activities (including O & M) that may be performed; and (iii) contains a binding agreement to inform any person or entity that subsequently acquires any title, easement, or other interest in the Property or any portions thereof of the requirements, conditions, and operative effect of this Section XIII (SITE ACCESS).

B. At least ninety (90) days prior to any conveyance that is subject to this Section, the County shall notify, by registered mail, the United States, the State and the other Settlers of the intent to convey any title, easement, or other interest in the Property , or any portion thereof, and of the proposed wording of the covenant required under this Section XIII (SITE ACCESS). The notice shall include the name, address and telephone number of the transferee. The restrictions and obligations set forth in this Section XIII (SITE ACCESS) shall be made to run with the land and shall be binding upon any and all persons or entities that acquire any title, easement, or other interest in the Property or any portion thereof.

C. The Private Settlers are hereby ordered and hereby agree:

1. Not to interfere with or disturb the Work to be performed under this Consent Decree by the County or alter the remedial facilities constructed by the County pursuant to this Consent Decree.

2. Within thirty days after entry of this Consent Decree, the Private Settlers and the County shall meet and develop a plan for their coordinated implementation of all construction and operation and maintenance activities associated with their respective undertaking of Work 1 or Work 2. The plan shall be framed to permit the most cost-effective implementation of both Work 1 and Work 2 consistent with the schedules for such work set forth in this Consent Decree. The plan shall not alter any of the requirements imposed under this Consent Decree.

3. Representatives of the Private Settlers and the County shall at regular intervals review this plan and make such adjustments as may be necessary to achieve the above-stated purpose of this plan.

D. In the event access is needed to property not owned or controlled by the County and such owner refuses access, the Settlers shall use their best efforts to secure voluntary access. In the event that the Settlers are unable, despite best efforts, to obtain such access at reasonable cost within thirty (30) days, they shall notify the EPA, in writing, of their failure to obtain such access, and the efforts made to obtain such access. If the Settlers have used their best efforts and failed to obtain access, and the Settlers satisfy the requirements of Section XVII (FORCE MAJEURE), failure to obtain access shall be considered a force majeure event. The Settlers shall bear all reasonable and necessary costs and expenses to obtain such access (including all costs or expenses incurred by the United States in exercising any

legal authority it may have to assist the Settlers in obtaining such access; which costs shall be considered oversight costs under Section XXII (CLAIMS AGAINST THE FUND AND PAYMENT OF RESPONSE COSTS) of this Consent Decree), except to the extent that the Court may order such costs to be paid by a person or entity other than the United States.

E. The State and the County shall cooperate to assure that the property owned or controlled by the County shall not be used in a manner inconsistent with the remedial action for Operable Units One and Two, including any wetlands or other natural resource restoration and/or preservation project required by the State of Delaware, the United States Department of the Interior, and/or the United States Department of Commerce, as a result of subsequent proceedings or settlement agreements.

F. The Settlers shall not prevent the Federal and/or State governments, or their designated representatives, from gaining access to the Site.

G. Nothing in this Section XIII (SITE ACCESS) shall limit the authority of the United States or State to enter the Site under federal or state law.

H. Any disputes concerning this Site Access provision shall be resolved via the dispute resolution procedure established by Section XVIII (DISPUTE RESOLUTION) herein. In the event of any dispute between the Private Settlers and the County concerning this Site Access provision, either the Private Settlers or the County may file a petition under Section XVIII(A)

(DISPUTE RESOLUTION) if the parties cannot resolve within five working days any such dispute.

XIV. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. The Settlers shall promptly make available to the United States the results of all sampling and/or tests or other data, including raw data, generated by the Settlers, or on their behalf, pursuant to this Consent Decree. The Settlers shall submit these results in reports as described in Section IX (REPORTING REQUIREMENTS) of this Consent Decree, and as described in the Work Plans. EPA promptly will make available to the Settlers the validated results of sampling and/or tests or other validated data similarly generated by EPA.

B. At the request of EPA, the Settlers shall allow split or duplicates samples to be taken by the United States and/or its authorized representatives of any samples collected by the Settlers pursuant to the implementation of this Consent Decree. The Settlers shall notify EPA seven (7) days in advance of any sampling activity.

C. The Settlers may assert a claim of business confidentiality covering part of the information or documentation developed in connection with this Consent Decree in the manner described in 40 C.F.R. § 2.203(b). Such claims shall be supported by documentation when the assertion is made by the Settlers in accordance with the requirements of 40 C.F.R. § 2.204(e)(4). Analytical data and other information specified in Section 104(e) of CERCLA, 42 U.S.C. § 104(e), shall not be

claimed as confidential by the Settlers. Information determined to be confidential by EPA will be made available to the public only in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no claim of business confidentiality accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to the Settlers.

XV. RECORD PRESERVATION

A. For ten (10) years after termination of this Consent Decree, Private Settlers and the County, or responsible persons designated by them, shall retain all records and documents, including all cost documentation, in their possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys which relate respectively in any way to Work-1 and Work-2, despite any document retention policy to the contrary. Notwithstanding any delegation of custody of such documents, Private Settlers and the County shall be responsible for any respective failure to preserve. At the end of this ten (10) year period, the Private Settlers and the County, or their agent(s) having custody of the documents, shall notify EPA at least sixty (60) days prior to the destruction of any such documents. If, however, Settlers submit claims against the Fund pursuant to Section XXII (CLAIMS AGAINST THE FUND AND PAYMENT OF RESPONSE COSTS), then all cost documentation and any record relating to those claims shall be maintained for a period not

less than ten (10) years from the date on which the final claim was submitted to the Fund.

B. Upon request by EPA, the Private Settlers and the County shall make available to EPA such records or copies of any such records, subject to the attorney-client privilege, the privilege related to documents or records protected by the attorney work product doctrine, and any other privilege recognized under federal law. In the event Settlers withhold a document as privileged, Settlers shall provide EPA with the title of the document, the date of the document, the name of the author, the name of the addressee and/or recipient, a description of the contents of the document, identification of the privilege asserted, and a description of the basis for the claim asserted.

XVI. STIPULATED PENALTIES

A. Except with respect to any extensions agreed to by the Parties in writing, but not including extensions resulting from Settlers' pursuit of dispute resolution under Section XVIII (DISPUTE RESOLUTION), and for any force majeure events covered by Section XVII (FORCE MAJEURE) herein, and subject to Section XIII(C) (SITE ACCESS), for each working day that the Private Settlers or the County fail to submit a report or a document or otherwise fail to commence or achieve the requirements of this Consent Decree, the Private Settlers or the County shall be subject for each such failure on each such day to the imposition of stipulated penalties as set forth below. The Private Settlers shall be jointly and severally liable for their stipulated

penalties set forth in this Section XVI (STIPULATED PENALTIES). The County shall be solely liable for its stipulated penalties set forth in this Section XVI (STIPULATED PENALTIES).

1. Project Activities

With the exception of monthly progress reports listed in Section IX(A) (REPORTING REQUIREMENTS) of this Consent Decree, each day that the Private Settlers or the County fail to submit a plan or report to be submitted during the course of the Work in accordance with the schedule in the Work Plans, or commence or complete the tasks listed in accordance with the requirements of this Consent Decree, the Private Settlers and/or the County shall be subject to the imposition of stipulated penalties in the following amounts:

Days 1 - 10	\$1,500 per day
Days 11 - 30	\$3,000 per day
After 31 days	\$6,000 per day

2. Reports

For each day that the Private Settlers or the County fail to submit a progress report in accordance with the requirements of Section IX(A) (REPORTING REQUIREMENTS) of this Consent Decree, or to be established in the Work Plan, the Private Settlers or the County shall be subject to the imposition of stipulated penalties in the following amounts:

Days 1 - 14	\$ 500 per day
Days 15 - 30	\$1,000 per day
After 31 days	\$1,500 per day

3. Failure to Achieve Other Requirements

For each working day that the Private Settlers or the County fail to commence or achieve any other schedule requirements of this Consent Decree, the Private Settlers or the County shall be subject for each such failure on each such working day to the imposition of stipulated penalties as set forth below:

Days 1 - 10	\$1,500 per day
Days 11 - 30	\$3,000 per day
After 31 days	\$6,000 per day

B. Payment of stipulated penalties shall be due and payable within thirty (30) days following receipt of a written demand for such payment by the United States, sent by certified mail, return receipt requested. In its demand the United States will describe the basis for the imposition of the stipulated penalties under this Consent Decree. Interest will begin to accrue on stipulated penalties if the penalty amount is not paid within thirty (30) days after the Settlers receive written demand by the United States unless one of the Settlers has initiated dispute resolution procedures pursuant to Section XVIII (DISPUTE RESOLUTION). Interest will be assessed at the rate of the current annualized treasury bill rate as of the date of the demand.

C. If dispute resolution procedures are invoked, stipulated penalties shall be placed in an interest bearing escrow account pending resolution of the dispute. Written notice of deposits into the escrow account shall be sent to the Regional

Hearing Clerk as set forth in paragraph (D) below. Any such account shall be open to audit by the United States. If the dispute is resolved in favor of the United States, the monies in the approved escrow account shall, including all accrued interest, be transferred to the Hazardous Substance Superfund within thirty (30) days of such decision.

D. Payment of stipulated penalties to EPA shall be made by cashier's or certified check, which references the Site name, and is payable to the Hazardous Substance Superfund and shall be mailed to:

EPA, Region 3
Attn: Superfund Accounting
P. O. Box 360515M
Pittsburgh, PA 15251

A copy of the check and transmittal letter shall be sent to the EPA Remedial Project Manager and to:

Regional Hearing Clerk (3RC00)
U.S. EPA - Region 3
841 Chestnut Building
Philadelphia, PA 19107

E. Accrual of these stipulated penalties shall stop if and when the requirement that was the subject of the penalty has been achieved or the United States begins performing the Work that was the subject of the demand or Settlers complete performance of such Work, whichever occurs first.

F. The imposition of stipulated penalties in accordance with this Section does not preclude the United States from pursuing any other remedies, including the statutory maximum penalty, or enforcement actions which may be available by reason

of the Settlers' failure to comply with any of the requirements of this Consent Decree, provided, however, that any stipulated penalties assessed by EPA and actually paid will be deducted from any statutory penalty imposed for the same event.

G. After the date of the County's execution of this Consent Decree and assuming that this Consent Decree is entered by the Court, the State shall not assert, demand, or seek to collect from the County any stipulated penalty authorized by the October 8, 1987 Notice of Conciliation Proceedings issued by the State in connection with NPDES Permit No. DE0050741.

H. Neither the pendency of dispute resolution proceedings under Section XVIII (DISPUTE RESOLUTION) nor the payment of penalties shall alter the Settlers' obligation to complete the Work or perform any other obligations required under this Consent Decree.

XVII. FORCE MAJEURE

A. The Settlers' activities under this Consent Decree shall be performed in the manner and within the time limits set forth herein, unless performance is delayed or prevented by an event arising solely from causes beyond the control of Settlers and which could not have been avoided or overcome by the exercise of due diligence. Increased costs or expenses associated with implementation of the Work called for in this Consent Decree and the economic circumstances of the Settlers shall not be considered circumstances beyond the control of the Settlers. The Settlers' time to perform the activities or comply with the

requirements affected by the force majeure event shall be extended for a period of time equal to the extent of the delay caused by the force majeure event. However, the Settlers shall use best efforts to expeditiously complete the delayed activity or come into compliance. All elements of the Work not affected by the force majeure event shall continue and be completed in accordance with the applicable schedule.

B. When circumstances are occurring or have occurred that may delay performance or prevent compliance with any obligation under this Consent Decree, whether or not due to a force majeure event, the Settlers shall notify the United States and the State orally within seven (7) days and in writing as soon as possible, but in no event more than twenty (20) working days after learning of any event which Settlers believe may delay the Work or prevent compliance. Such notice shall describe:

1. the nature and cause of the event the Settlers consider to be force majeure, including, if applicable, a statement of the Settlers' rationale for interpreting such event as force majeure;
 2. the measures taken and to be taken by the Settlers to prevent or minimize the delay or non compliance;
 3. the anticipated length of the delay or non compliance;
 4. the timetable by which various measures will be implemented to prevent or minimize the delay or non compliance;
- and

5. the date by which or the time period within which the Settlers propose to complete the activities as to which the deadline applied.

Such notice by the Settlers shall be accompanied by any documentation relating to (1) through (5), above. Failure by the Settlers to comply with the notice requirements of this Section shall constitute a waiver of the Settlers' rights under this Section to assert that the event was force majeure. The burden of proving that any delay is caused by a force majeure and the extent of the delay caused by the force majeure shall rest with the Settlers.

C. The United States shall respond in writing to any notice submitted by the Settlers pursuant to Section XVII(B) (FORCE MAJEURE) of this Consent Decree, indicating whether the United States agrees that the delay or noncompliance was caused by a force majeure event and approves the Settlers' proposed date or time period for completion of the delayed activities. The United States' written approval shall be deemed to be incorporated into this Consent Decree. If the United States does not so approve, the United States shall so state its reasons in writing. An extension of time for performance of the obligation directly affected by the force majeure event shall not necessarily justify an extension of time for performance of a subsequent obligation not directly affected by the force majeure event.

D. Delay or non compliance caused by force majeure shall not be deemed a violation of this Consent Decree, nor shall it make the Settlers liable for the stipulated penalties contained in Section XVI (STIPULATED PENALTIES) of this Consent Decree.

XVIII. DISPUTE RESOLUTION

A. Except as otherwise provided in Section XXII (CLAIMS AGAINST THE FUND AND PAYMENT OF RESPONSE COSTS), all disputes between the Parties arising under this Consent Decree, shall be resolved according to this Section. If a dispute arises under this Consent Decree, the EPA Remedial Project Manager and Settlers' Project Coordinators shall first attempt to resolve the matter informally. EPA, however, may at any time notify the Private Settlers and/or the County of disputes concerning Work-1 or Work-2, as may be appropriate. If the EPA Remedial Project Manager and Settlers' Project Coordinators cannot resolve a difference of opinion with respect to such matters within two (2) working days, or, if the Private Settlers and/or the County object to any United States' notice of deficiency, notice of disapproval or any other decision made pursuant to this Consent Decree, the Private Settlers and/or the County shall notify the United States in writing of their objection within fourteen (14) days of receipt of the notice or decision, or of the difference of opinion. EPA and the Private Settlers and/or the County shall then have fourteen (14) days from the receipt by EPA of the notification of objection to negotiate to reach agreement. If agreement cannot be reached on any issue within this fourteen

(14) day period, EPA shall within the succeeding ten (10) days provide a written statement of its final decision to the Private Settlers and/or County. The decision of the United States shall be binding unless the Private Settlers and/or the County file a petition with the Court within fourteen (14) days of issuance of EPA's final decision setting forth the matter in dispute and the relief requested. Failure to file a petition requesting relief within the fourteen (14) day period shall constitute a waiver of this Section XVIII (DISPUTE RESOLUTION) for the disputed final decision. In an emergency, any Party may file a petition at any time. The period for negotiations may be extended by mutual agreement between EPA and the Private Settlers and/or the County. In no circumstances shall the invocation of this paragraph delay the Work or any part thereof except as otherwise may be agreed by the Parties or ordered by the Court.

B. Payment of Stipulated penalties with respect to any disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, Stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settlers do not prevail on the disputed issue, Stipulated penalties shall be assessed and paid as provided in Section XVI (STIPULATED PENALTIES).

C. In any dispute presented to the Court for resolution involving matters falling within the scope of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the Court shall affirm the position

of the United States unless such position shall be shown, on the administrative record, by the Settlers, to be arbitrary and capricious or otherwise not in accordance with law. For any other dispute arising under this Decree, the Court shall determine the appropriate standard of review.

C. The failure to specifically reference this Section XVIII (DISPUTE RESOLUTION) in any other provision of this Consent Decree shall not be interpreted as a waiver of the applicability of this Section.

D. The provisions of this Section regarding Dispute Resolution shall not apply to disputes between the State and the United States.

XIX. RESPONSE AUTHORITY

A. Except as provided in Sections VII (IMPLEMENTATION OF WORK) and XXI (COVENANT NOT TO SUE), nothing in this Consent Decree shall be deemed to limit the authority of the United States under Sections 104 and 106 of CERCLA, 42 U.S.C. §§ 9604 and 9606, or the authority of the OSC under 40 C.F.R. § 300.65, or the right of the United States to recover the costs of such response under Section 107 of CERCLA, 42 U.S.C. § 9607, or any other legal authority.

B. Except as is specifically provided in Section VII(I) (IMPLEMENTATION OF WORK) herein, so long as the Settlers are performing the Work required by this Consent Decree and the Work performed is in compliance with the terms of this Consent Decree, the United States shall not perform this same Work. This

provision shall in no way limit the United States from oversight of Work performed by the Settlers, including the taking and analysis of duplicate samples.

XX. CONSISTENCY WITH NATIONAL CONTINGENCY PLAN

A. The United States, the State and the Settlers agree that the Work, if performed in accordance with the requirements of this Consent Decree, is consistent with the provisions of the National Contingency Plan, promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and all actions taken or omitted in performing the Work are afforded all protection provided in Section 107(d) of CERCLA, 42 U.S.C. § 9607(d).

XXI. COVENANT NOT TO SUE

A. Except as specifically provided in this Section, the United States and the State covenant not to sue the Settlers for Covered Matters. For the purposes of this Section only, the term "Covered Matters" shall mean any and all civil claims against, and civil liability of the Settlers to the United States and the State for causes of action arising under Sections 106 and 107(a) of CERCLA, as amended, 42 U.S.C. §§ 9606 and 9607(a), and the provisions of state statutory law, relating to:

1. Implementation of the Work for Operable Unit One and Operable Unit Two, (including collection, treatment and monitoring of groundwater underlying the Delaware Sand and Gravel Superfund Site) as set forth in ROD-1 and ROD-2 and more specifically described in Scope of Work-1, Scope of Work-2, and the Work Plans submitted to and approved by EPA;

2. The implementation and continuation of operation and maintenance activities pertaining to the Work for ROD-1 and ROD-2;

3. Sediments in Army Creek, and upgradient trenching and diversion and/or treatment as specified in ROD-1;

4. Payment of Oversight costs and response costs incurred by the United States and/or the State except to the extent that the Settlers are obligated to pay such costs under Section XXII(H) and (I) (CLAIMS AGAINST THE FUND AND PAYMENT OF RESPONSE COSTS) herein; and

5. Damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss of natural resources, resulting from the release or threat of release of hazardous substances from (a) the Site, and (b) with respect to the Delaware Sand and Gravel Landfill Superfund Site, releases or threatened releases of hazardous substances which cause or contribute to ground water contamination and contamination of Army Creek and the Army Creek habitat. "Natural resources" shall have the meaning assigned to them by Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

B. For purposes of this Section, "Covered Matters", does not include:

1. Claims based on a failure by the Settlers to meet the requirements of this Consent Decree;

2. Subject to paragraph A above, claims for

injunctive relief and response costs incurred pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c);

3. Criminal claims; and

4. Claims based on liability for hazardous substances removed from the Site.

C. This covenant not to sue the Private Settlers and the County shall take effect upon approval by EPA of completion of the construction phase of Work-1 and Work-2 respectively, payment to EPA of the sum specified in Section XXII(H) (CLAIMS AGAINST THE FUND AND PAYMENT OF RESPONSE COSTS AND NATURAL RESOURCE DAMAGES) for past response costs incurred by the United States, and payment of the sum specified in Section XXII(K) for damages for injury to, destruction of, or loss of natural resources incurred by the United States and the State. The United States or the State shall not initiate any action for covered matters while the Private Settlers or the County are pursuing completion of Work-1 and Work-2 respectively and are otherwise in compliance with this Consent Decree.

D. A determination regarding certification of completion will be made by EPA within one (1) year of successful completion of the construction phase of the Work-1 and Work-2, respectively.

E. Notwithstanding this covenant not to sue, Settlers shall not be entitled to the protection afforded by this covenant not to sue with respect to any response actions that EPA undertakes or determines are necessary pursuant to Sections VII(I)

(IMPLEMENTATION OF WORK), VIII (U.S. EPA PERIODIC REVIEW), or XVI (STIPULATED PENALTIES).

F. Notwithstanding any other provision in this Consent Decree, the United States and the State reserve their right to institute proceedings in this action or in a new action seeking (1) to compel Settlers to perform any additional response work for Covered Matters, (2) reimbursement of the United States' response costs, or (3) damages for injury to, destruction of, or loss of natural resources if:

1. for proceedings prior to EPA certification of completion of the remedial action;

a. conditions at the Site relating to Covered Matters, previously unknown to the United States or the State, are discovered after the entry of this Consent Decree; or

b. information is received, after the entry of this Consent Decree; and

c. these previously unknown conditions or information indicates that the remedial action taken is not protective of human health and/or the environment or, with respect to proceedings or actions to recover therefor, that there is injury to, destruction of, or loss of natural resources that was previously unknown; or

2. subsequent to the EPA certification of completion of the remedial action,

a. conditions at the Site relating to Covered Matters, previously unknown to the United States or the State,

are discovered after the certification of completion by EPA Region III; or

b. information is received, after the certification of completion by EPA of Work-1 and Work-2; and

c. these previously unknown conditions or information indicates that the remedial action taken is not protective of human health and/or the environment or, with respect to proceedings or actions to recover therefor, that there is injury to, destruction of, or loss of natural resources that was previously unknown.

3. Knowledge and information in the possession of the State shall not be imputed to the United States and knowledge and information in the possession of the United States shall not be imputed to the State.

G. Notwithstanding any other provision in this Consent Decree, the covenant not to sue in this Section shall not relieve the Settlers of their obligation to meet and maintain compliance with the requirements set forth in this Consent Decree, including the requirements to be included in the Work Plan for Operable Unit One and Operable Unit Two, which are incorporated herein. The covenant not to sue provided by this Section shall be subject to the satisfactory performance by Settlers of their obligations under this Consent Decree.

H. Nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue with regard to Non-Settlers.

I. Except as expressly provided in this Consent Decree, each party reserves all rights, claims and defenses it has under CERCLA, or any other law or in equity.

J. Nothing in this Section or any other Section of this Consent Decree shall be deemed an admission of liability (or of an element of liability) or a waiver by any Settlor of any defense available under CERCLA, RCRA or any other statute or the common law to any claim for relief in any proceeding subsequently instituted by the United States or the State in connection with the Site. Settlers, however, shall not be able to contest their obligation to comply with the terms of this Consent Decree but shall have the right to contest whether they have complied with those obligations. Nothing in this Section shall relieve the United States or the State of any applicable requirement to establish the elements of any statutory or common law claim under which it seeks to obtain any additional relief, not authorized by this Consent Decree, from the Settlers in connection with the Site. In the event the United States, or the State, secures additional relief in an action instituted pursuant to Section XXI(F) (COVENANT NOT TO SUE) hereof, pursuant to Section 122(b)(4) of CERCLA, as amended, the Fund shall be subject to an obligation for subsequent remedial actions at the Site only to the extent that such subsequent actions are necessary by reason of failure of the original remedy. Such obligation shall be in a proportion equal to, but not exceeding, the proportion

contributed by the Fund for the original remedial action pursuant to the Preauthorization Documents referenced in Section XXII (CLAIMS AGAINST THE FUND AND PAYMENT OF RESPONSE COSTS).

K. For and in consideration of the covenants and promises made herein, the Settlers waive, release, and covenant not to sue or otherwise assert any cause of action, claims, or demands against the United States and the State with respect to the Site, or for expenses related to this Consent Decree, including any claims pursuant to Section 106(b), of CERCLA, 42 U.S.C. § 9606(b), or any other provision of law, directly or indirectly, or against the Hazardous Substances Superfund established by Section 121 of CERCLA, 42 U.S.C. § 9621, or any other claims against the United States and the State for expenses related to this Consent Decree, except that Settlers may submit the claims described in Section XXII (CLAIMS AGAINST THE FUND AND PAYMENT OF RESPONSE COSTS). The Settlers' waiver, release, and covenant not to sue under this paragraph K shall not apply in the event that the United States or the State institutes an action against the Settlers under Paragraph F hereof or with respect to any matter to which the covenant of the United States or the State pursuant to Paragraph A hereof is found inapplicable by the Court.

XXII. CLAIMS AGAINST THE FUND AND PAYMENT
OF RESPONSE COSTS AND NATURAL RESOURCE DAMAGES

A. In accordance with the Preauthorization Decision Document attached to this Consent Decree as Exhibit 7, the Private Settlers may submit a claim for reimbursement to the Hazardous Substance Superfund (the "Fund") for up to ten percent (10%) of the costs incurred in completing Work-1, excluding any expenses incurred for Operation and Maintenance of Work-1. In no event shall the Settlers' claim against the Fund exceed the sum of \$2,000,000.00, unless the amount preauthorized is modified pursuant to paragraph C of this Section. The eligibility of claims shall date from the effective date of the Preauthorization Decision Document.

B. In accordance with Exhibit 8, the Preauthorization Decision Document, the County may submit a claim for reimbursement to the Hazardous Substance Superfund (the "Fund") for up to forty percent (40%) of its costs incurred in completing Work-2, including expenses incurred for the pumping and treating of groundwater. In no event shall the New Castle County's claim against the Fund exceed the sum of \$2,000,000.00, unless the amount preauthorized is modified pursuant to paragraph C of this Section. The eligibility of claims shall date from the effective date of the Preauthorization Decision Document.

C. If it is subsequently determined by EPA that it is necessary to modify the actions that EPA preauthorized, or if it becomes apparent that the project's costs will exceed the

approved costs as set out in the Preauthorization Decision Document, or if the Settlers undertake additional Work required by EPA pursuant to Sections VI (WORK TO BE PERFORMED), VII (IMPLEMENTATION OF WORK), or VIII (U.S. EPA PERIODIC REVIEW), the Settlers may submit to EPA a revised application for preauthorization. EPA will consider requests for preauthorization from the Settlers in a timely manner and subject to the availability of funds appropriated for response actions from the Hazardous Substances Superfund and will, upon submission of all required documentation, revise the preauthorization to cover ten percent (10%) of Private Settlers' reasonable and necessary costs to implement Work-1, and forty percent (40%) of the County's reasonable and necessary costs to implement Work-2.

D. The Settlers' claims against the Fund shall cover only the Settlers' costs of remedial action. The Settlers' claims against the Fund shall not include any of the United States' oversight costs, investigatory costs or past response costs that were incurred prior to the lodging of this Consent Decree. Reimbursement from the Fund of the amount claimed by the Settlers shall be subject to the applicable claims and audit procedures specified in the Preauthorization Decision Document.

E. Any claims for reimbursement against the Fund shall not exceed ten (10%) of costs incurred in completing Work-1; and forty (40%) of costs incurred in completing Work-2,

including costs incurred for pumping and treating groundwater for the first ten years of operation of the treatment plant. Settlers may present a claim against the Fund only after the claim has been presented to any person known to them who may be liable under Section 107 of CERCLA and which claim has not been satisfied within sixty (60) days. If the first claim was denied by the responsible party or not responded to, and EPA agrees that there is no reason to believe that subsequent claims would be honored by such responsible party, the denial of the first claim, or lack of response, shall be considered denial of every subsequent claim. If EPA denies a claim in whole or in part, EPA shall notify the Settlor in writing of the reason for such denial. If the Settlor is dissatisfied with EPA's decision to deny any claim against the Fund, in whole or in part, the Settlor may demand an administrative hearing before an administrative law judge as provided in Section 112(b) of CERCLA, 42 U.S.C. § 9612(b).

F. Payment of any claim to the Settlers shall be subject to the subrogation of the rights of the Settlers as claimants to the United States, to the extent to which the Settlers' response costs are compensated from the Fund. Further, the Settlers shall assist in any cost recovery action which may be initiated by the United States. The Settlers and the Settlers' contractors shall furnish the personnel, services, documents, and materials needed to assist EPA in the collection of evidence to document work performed and costs

expended by the Settlers or the Settlers' contractors at the Site in order to aid in cost recovery efforts. Assistance shall also include providing all requested assistance in the interpretation of evidence and costs, and providing requested testimony. All of the Settlers' contracts for implementing the Preauthorization Decision Document shall include a specific requirement that the contractors agree to provide this cost recovery assistance.

G. The Settlers shall not make any claims against the Fund except as provided in this Section.

H. Within thirty (30) days after the entry of this Consent Decree, the Settlers shall jointly and severally pay the United States Environmental Protection Agency the sum of \$1,000,000.00, which represents a portion of past response costs incurred by the United States in responding to the release and threatened release of hazardous substances at the Site. Such costs are listed and described in Exhibit 9 which is attached hereto and incorporated by reference. The payment to EPA shall be by certified check payable to "Hazardous Substance Superfund" and shall be sent by certified mail, return receipt requested, to:

EPA, Region 3
Attention: Superfund Accounting
P. O. Box 360515M
Pittsburgh, Pennsylvania 15251

The check shall reference the Site name. A copy of the cover letter and the check shall be sent to the EPA Remedial Project Manager and the Regional Hearing Clerk (3RCOO), U.S.

Environmental Protection Agency, Region 3, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, and to Attn: Rosemarie Pacheco, Environmental Enforcement Section, U.S. Department of Justice, P. O. Box 7611, Ben Franklin Station, Washington, D.C. 20044.

I. The Settlers shall be jointly and severally liable for and shall pay oversight costs of the United States incurred in overseeing implementation of Work-1 and of Work-2 to assure compliance with the terms of this Consent Decree and CERCLA and the NCP. Payments of all such costs, which costs must not be inconsistent with the NCP, shall be made on an annual basis and within sixty days of the submission of itemized cost statements. The Settlers shall be given timely and reasonable opportunity to review supporting documents for such submittals. In the event the Settlers dispute claimed oversight costs or any portion thereof, such costs, to the extent found in Dispute Resolution to be payable, shall be paid within thirty (30) days after the final decision in the dispute resolution procedure, with interest running from thirty (30) days after submission of the original itemized cost statement until the date of payment. Such interest shall be calculated at the then prevailing interest rate on fifty-two week U.S. Treasury MK bills maturing in September of each year. The United States' best estimate is that its oversight costs through the construction phase of Work-1 and Work-2 will be in the range of \$1,000,000.00. As a convenience to the

Settlors, EPA shall maintain two separate accounts for oversight costs, one for expenses incurred for Work-1 and another for expenses incurred for Work-2. Billing for costs incurred for Work-1 will be directed to the Private Settlers and billing for costs incurred for Work-2 will be directed to the County.

J. If oversight costs are outstanding at the time the United States plans to certify completion pursuant to Section XXIII(B) (EFFECTIVE AND TERMINATION DATES SUBSEQUENT MODIFICATIONS), the Settlers shall, within sixty (60) days of the submission of an itemized cost statement and before termination of this Consent Decree, pay such oversight costs. In the event the Settlers dispute claimed oversight costs, such costs, to the extent found in Dispute Resolution to be payable, shall be paid within thirty (30) days after the final decision in the dispute resolution procedure, with interest running from thirty (30) days after submission of the original itemized cost statement until the date of payment. Such interest shall be calculated at the then prevailing interest rate on fifty-two week U.S. Treasury MK bills maturing in September of each year. The United States shall not certify completion until such time as all costs required to be paid under this Consent Decree plus interest are paid by the Settlers.

K. Within thirty (30) days after the entry of this Consent Decree, the Settlers shall jointly and severally pay

the United States Department of the Interior ("DOI") the sum of \$266,000.00, the United States Department of Commerce, National Oceanic and Atmospheric Administration ("NOAA") the sum of \$266,000.00, and the Delaware Department of Natural Resources and Environmental Control ("DNREC") the sum of \$268,000.00, which represents a portion of the damages for injury to, destruction of, or loss of natural resources incurred by the United States and the State resulting from the release and threatened release of hazardous substances at the Site and the Delaware Sand & Gravel Landfill Superfund Site as referenced in Section XXI(A)(5) (COVENANT NOT TO SUE). The payment to DOI shall be by certified check payable to "U.S. Department of the Interior" and shall be sent by certified mail, return receipt requested, to:

Office of Fiscal Services
Office of the Secretary
U.S. Department of the Interior
Mail Stop 5257
1849 C Street, N.W.
Washington, D.C. 20240

The check shall reference the Site name. A copy of the cover letter and the check shall be sent to Director, Office of Environmental Affairs, U.S. Department of the Interior, 1849 C Street, N.W.--Room 2340, Washington, D.C. 20240. The payment to NOAA shall be by certified check payable to "U.S. Department of Commerce, NOAA" and shall be sent by certified mail, return receipt requested, to:

General Counsel
National Oceanic and Atmospheric Administration
Herbert Hoover Building, Room 5814
14th and Constitution Avenue, N.W.
Washington, D.C. 20230

The check shall reference the Site name. Copies of the checks to DOI and NOAA shall be sent to Attn: Rosemarie Pacheco, Environmental Enforcement Section, U.S. Department of Justice, P. O. Box 7611, Ben Franklin Station, Washington, D.C. 20044. The payment to DNREC shall be by certified check payable to "Delaware Department of Natural Resources and Environmental Control" and shall be sent by certified mail, return receipt requested, to:

Legal Office
Delaware Department of Natural Resources and
Environmental Control
State of Delaware
89 Kings Highway
Wilmington, Delaware 19901

The check shall reference the Site name.

XXIII. EFFECTIVE AND TERMINATION DATES
SUBSEQUENT MODIFICATION

A. This Consent Decree shall become effective upon the date of its entry by the Court.

B. The provisions of this Consent Decree shall terminate and be deemed satisfied upon the Settlers' receipt of written notice from the United States that the Settlers have demonstrated to the satisfaction of the United States that all of the terms of this Consent Decree have been completed and all oversight costs and stipulated penalties required to be paid under this Consent Decree have been paid,

provided, however, that Operation and Maintenance as required by each Work Plan and Sections VI (WORK TO BE PERFORMED), VIII (PERIODIC REVIEW), XIII (SITE ACCESS), XIV, (SAMPLING AND DATA/DOCUMENT AVAILABILITY), XV (RECORD PRESERVATION), and XIX (RESPONSE AUTHORITY), XXI (COVENANT NOT TO SUE) and XXV (CONTRIBUTION PROTECTION) of this Consent Decree, shall survive termination.

C. Except as specifically provided in Section VII(D) (IMPLEMENTATION OF WORK) and Section XI(D) (DESIGNATED REMEDIAL PROJECT MANAGER AND PROJECT COORDINATORS), no modifications, to which the Parties agree, shall be made to this Decree without written notification to the Court and written approval of the United States, the State, and the Settlers.

XXIV. USE OF DECREE/ADMISSIONS

A. Settlers specifically deny any violation, fault or liability under any federal, state or local law or any legal liability whatsoever in connection with the Site or otherwise. Nothing in this Consent Decree is intended by the Parties to be, nor shall it be, an admission or adjudication of facts or law, an estoppel or a waiver with respect to any matter, act, claim, right or defense by the Settlers for any purpose, or evidence of any wrong doing, misconduct, fault or liability to any person on the part of the Settlers. Accordingly, it is the intention of the United States, the State, and the Settlers that, with the exception of any proceeding to enforce

this Consent Decree or for contribution or indemnity by or against the Settlers, this Consent Decree shall not be admissible into evidence in any other proceeding except that it may be admissible in: (1) a judicial or administrative proceeding between the Settlers and any insurance company concerning the obligation of such insurance company to pay any amounts expended by the Settlers or to satisfy any liability of Settlers hereunder; and (2) in any administrative or judicial proceeding arising from Settlers' claims against the Fund brought pursuant to Section XXII (CLAIMS AGAINST THE FUND AND PAYMENT OF RESPONSE COSTS).

XXV. CONTRIBUTION PROTECTION

Each Settlor shall have the benefit of the contribution protection provided under Section 113(f) and Section 122(h)(4) of CERCLA, 42 U.S.C. § 9613(f) and each of the Settlers agree that if a suit or claim for contribution is brought against it for matters covered by this Consent Decree, it will timely notify the United States and the State of the institution of such suit or claim. It is also agreed that the United States and the State shall not be under any obligation to assist the Settlers in any way in defending against such suits for contribution. Nothing in this Consent Decree shall affect the Settlers' right to seek recovery of expenditures made in compliance with this Consent Decree by way of indemnity or contribution except as against the United States or the State.

XXVI. RETENTION OF JURISDICTION

A. This Court will retain jurisdiction for the purpose of enabling any of the Parties to this Consent Decree to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the implementation, construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XVIII (DISPUTE RESOLUTION) hereto.

B. The United States, the State, and the Settlers retain the right to enforce the terms of this Consent Decree and take any action authorized by federal or state law not inconsistent with its terms to achieve or maintain compliance with the terms and conditions thereof.

XXVII. OTHER PROVISIONS

A. This Consent Decree may be executed in any number of counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.

B. All section headings herein are for convenience only and are in no way to be construed as part of this Consent Decree or as a limitation on the scope of the provision to which they may refer.

C. Failure or delay of the United States or EPA to provide to the Settlers any approvals or notices within designated time periods specified in this Consent Decree shall

not be construed or interpreted as approval by the United States or EPA of any matter, except as specifically provided in Section XVII(C) (FORCE MAJEURE) of this Consent Decree.

D. This Consent Decree represents the entire agreement and understanding between the Parties regarding the matters set forth herein and shall supersede all prior drafts, writings, negotiations, and discussions between the Parties.

E. This Consent Decree shall be lodged with the Court for a period not less than thirty (30) days for public notice and comment in accordance with Section 122(d) and (i) of CERCLA, 42 U.S.C. § 9622(d) and (i), 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, inadequate or improper. Settlers consent to the entry of this Consent Decree without further notice.

F. Each Settlor shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. Settlers hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure, including service of a summons, and any applicable local rules of this court.

G. In the event of conflict between or among the Consent Decree and the exhibits annexed, the Consent Decree shall control. Each Work Plan or Scope of Work, as applicable, shall govern its respective Preauthorization Decision Documents.

H. Upon entry of the Consent Decree, NPDES Permit No. DE0050741 shall be revoked and the October 8, 1987 Notice of Conciliation Proceedings issued by the State shall be withdrawn. The County consents to the revocation of the permit and the withdrawal of the Notice. Notwithstanding the foregoing, the State reserves the right to enforce Paragraph 6 of the Consent Order entered in Wilson v. County of New Castle, C. A. No. 87C-SE6, Kent County Superior Court, to fund Delaware Nature Society's Stream Watch Program.

XXVIII. COMMUNITY RELATIONS

As reasonably requested by EPA or the State, the Settlers shall participate in the preparation of all appropriate information disseminated to the public and in public meetings which may be held or sponsored by EPA or the State to explain activities at or concerning the Site.

THE PARTIES ENTER INTO THIS CONSENT DECREE RELATING TO THE ARMY CREEK LANDFILL SUPERFUND SITE.

FOR THE UNITED STATES OF AMERICA:

DATE

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

DATE

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JAMES M. STROCK
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FOR THE STATE OF DELAWARE:

DATE

EDWIN H. CLARK, II, Secretary
State of Delaware
Department of Natural Resources
and Environmental Control
89 Kings Highway
Dover, DE 19901

DATE

JEANNE L. LANGDON
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FOR THE DEFENDANTS:

THIS CONSENT DECREE (C.A. No. 90-) IS HEREBY
ENTERED AND MADE AN ORDER OF THIS COURT THIS _____ DAY OF . .
_____, 1990.

UNITED STATES DISTRICT COURT JUDGE