

Coke Sanitary Landfill

CORRIS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KOWINSKY FARMS, INC.,
MCCRORY PARENT CORP.,
RAPID-AMERICAN CORPORATION,
NABISCO BRANDS, INC.,
REICHOLD CHEMICALS, INC.,
and ALBERTA F. SCHMIDT,

Defendants.

CIVIL ACTION NO. 92-04-JJF

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CONSENT DECREE

I. BACKGROUND

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

B. The United States in its complaint seeks:

(1) reimbursement of costs incurred by EPA and the United States Department of Justice for response actions at the Coker's Sanitation Service Landfills Superfund Site (as defined below) in Cheswold Township, Kent County, Delaware, together with accrued

interest; (2) performance of studies and response work by the Defendants at the Site in conformity with the Record of Decision (as defined below) and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"); (3) a declaration of Defendants' liability for further response costs; and (4) such other relief as the Court finds appropriate.

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Delaware (the "State") on April 9, 1991 of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this settlement. By letter dated May 13, 1991, the State informed EPA that it did not intend to be a signatory to this Consent Decree.

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

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

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the CERCLA National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on July 22, 1987, 52 Fed. Reg. 27,620;

G. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, certain of the Settling Defendants entered into an Administrative Order on Consent with EPA and commenced on December 30, 1987, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to the NCP;

H. Certain of the Settling Defendants completed a Remedial Investigation ("RI") Report on December 28, 1989 and a Feasibility Study ("FS") Report on August 17, 1990;

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on August 22, 1990, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

J. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on September 28, 1990, on which the State has given its concurrence. The ROD includes a summary of responses to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

K. Based on the information currently available to EPA, EPA believes that the Work (as defined below) will be properly and promptly conducted by the Non-Owner Settling Defendants, the placement of deed restrictions required by the ROD will be properly and promptly implemented by the Owner Settling Defendants, and access to the Site will be provided by the Owner Settling Defendants as set forth in Section X (Access) of this Consent Decree.

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

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

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

II. JURISDICTION

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

III. PARTIES BOUND

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

B. Non-Owner Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work required by this Consent Decree and to each person representing any Non-Owner Settling Defendant with respect to the Site or the

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

IV. DEFINITIONS

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

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

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

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

4. "Duly Authorized Representative" shall mean a person designated in accordance with the procedures set forth in 40 C.F.R. § 270.11(b), except that the words "Remedial Project Manager" shall be substituted for the word "Director" in 40 C.F.R. § 270.11(b)(3). Each of the Non-Owner Settling Defendants hereby designates a Vice President of Clean Sites, Inc., 1199 N. Fairfax St., Alexandria, Virginia 22314, whose position is commensurate with the requirements of 40 C.F.R. § 270.11(b), as its Duly Authorized Representative.

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

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

7. "Future Liability" shall mean any liability of the Settling Defendants relating to the Site arising under Sections

106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), other than: (a) liability for Past and Future Response Costs, as defined herein, incurred by the United States with respect to the Site and (b) liability for completion of the Remedial Action required under the ROD, including attainment of any Performance Standards as set forth in Appendix C.

8. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in overseeing the Work, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph F of Section VI (Performance of the Work by Non-Owner Settling Defendants and Placement of Deed Restrictions by Owner Settling Defendants), Section VII (Additional Response Actions), Section X (Access), and Section XVI (Emergency Response), costs incurred by the United States in connection with any periodic review conducted pursuant to Section VIII (U.S. EPA Periodic Review) of this Consent Decree, and the costs of reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing or enforcing this Consent Decree, including Section VI.G. Future Response Costs shall also include all costs which have not been reimbursed, including direct and indirect costs, incurred by the United States in connection with the Site between October 24, 1990 and the effective date of this Consent Decree together with interest on any late payments.

9. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

10. "Non-Owner Settling Defendants" shall mean those Settling Defendants who are not owners of any of the property constituting the Site. The Non-Owner Settling Defendants are McCrory Parent Corp., Nabisco Brands, Inc., Rapid-American Corporation, and Reichhold Chemicals, Inc. McCrory Parent Corp. is an affiliate and a successor, in part, of Rapid-American Corporation.

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

12. "Owner Settling Defendants" shall mean those Settling Defendants who are owners of any of the property constituting the Site. The Owner Settling Defendants are Kowinsky Farms, Inc. and Alberta F. Schmidt.

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

14. "Parties" shall mean the United States and the Settling Defendants.

15. "Past Response Costs" shall mean all costs, including,

but not limited to, indirect costs, that the United States incurred with regard to the Site prior to October 24, 1990, excluding, however, any oversight costs which Nabisco Brands, Inc., Rapid-American Corporation (and successor McCrory Parent Corp.), and Reichhold Chemicals, Inc. are obligated to pay pursuant to the Administrative Order on Consent, EPA Docket No. III-88-16-DC, previously entered into by such parties (other than McCrory Parent Corp.) for performance of the RI/FS and the Administrative Order on Consent, EPA Docket No. III-88-44-DC, previously entered into by such parties (other than McCrory Parent Corp.) for the removal of drums at the Site.

16. "Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations that are used to determine whether the objectives of the ROD and this Consent Decree are being achieved as set forth in Appendix C or are developed by the Non-Owner Settling Defendants and approved by EPA during the Remedial Design. To the extent there is any inconsistency between the Performance Standards and the ROD, the terms and conditions of the ROD shall govern.

17. "Plaintiff" shall mean the United States.

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

19. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site set forth in Appendix A hereto

and signed on September 28, 1990, by the Regional Administrator, EPA Region III, and all attachments thereto.

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

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

22. "Remedial Design" shall mean those activities to be undertaken by the Non-Owner Settling Defendants pursuant to the Remedial Design Work Plan to develop the final plans and specifications for the Remedial Action as specified in the ROD, in accordance with Appendix C, and the monitoring set forth in Appendix D.

23. "Remedial Design Work Plan" shall mean a plan for Remedial Design, including a schedule for remedial design work, submitted by the Non-Owner Settling Defendants and approved by EPA pursuant to Section VI.B of this Consent Decree.

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

25. "Settling Defendants" shall mean the Non-Owner Settling Defendants and the Owner Settling Defendants.

26. "Site" shall mean the Coker's Sanitation Service Landfills Superfund site, encompassing approximately 25 acres, located along Route 152 approximately 1.3 miles northwest of Cheswold in Kent County, Delaware and depicted more particularly on the maps attached as Appendix B.

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

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

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

30. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

31. "Work" shall mean all activities the Non-Owner Settling Defendants are required to perform under this Consent Decree, including, but not limited to, the monitoring set forth in Appendix D, except those activities required by Section XXVI (Retention of Records).

V. GENERAL PROVISIONS

A. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are (i) to protect public health and welfare and the environment from releases or threatened releases of Waste Material from the Site by the placement by the Owner Settling Defendants of deed restrictions on the property constituting the Site as required by the ROD and by the design and implementation of the Remedial Action and Operation & Maintenance at the Site by the Non-Owner Settling Defendants and (ii) to reimburse all response costs of the Plaintiff.

B. Commitments by Settling Defendants

1. Non-Owner Settling Defendants shall finance and perform the Work in accordance with CERCLA, the NCP, and this Consent Decree, including, but not limited to, Appendices C and D, the ROD, and all standards, specifications, and schedules set forth in or developed pursuant to this Consent Decree. Non-Owner Settling Defendants shall also reimburse the United States for Past Response Costs, Future Response Costs, and the Federal Trustees' Costs (as defined in Section XVII.B) as provided in this Consent Decree.

2. The obligations of the Non-Owner Settling Defendants to finance and perform the Work and to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more of the Non-Owner Settling Defendants to implement the

requirements of this Consent Decree, the remaining Non-Owner Settling Defendants shall complete all such requirements. In addition, in accordance with Section XXII.G, if, subsequent to the entry of this Consent Decree, the United States receives information, in whole or in part, that indicates that either or both of the Owner Settling Defendants had materially greater financial resources and/or assets than such Owner Settling Defendant(s) represented to the United States as of the entry of this Consent Decree, then such Owner Settling Defendant(s) will also be jointly and severally liable with respect to the obligations to finance and perform the Work and to pay amounts owed the United States under this Consent Decree.

3. Owner Settling Defendants shall place deed restrictions on the Site in accordance with CERCLA, the NCP, and this Consent Decree, including, but not limited to, Appendix C, the ROD, and all standards, specifications, and schedules set forth in or developed pursuant to this Consent Decree. The Owner Settling Defendants shall perform the activities required under Paragraph E, below, of this Section V and provide access to the Site as more specifically set forth in Section X (Access) of this Consent Decree. Settling Defendant Kowinsky Farms, Inc. acknowledges that it has access rights to its property from County Road 152 and that such access rights shall be fully available to the United States, the State and all Settling Defendants for all matters under this Consent Decree. Settling Defendant Kowinsky Farms, Inc. shall have the obligation of

securing any additional properties owned by Joseph S. Kowinsky, Jr. or Fred Kowinsky within a reasonable distance adjacent to its property that may be required to implement this Consent Decree.

C. Compliance With Applicable Law

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

D. Permits

1. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. § 300.400(e), no permits shall be required for any portion of the Work conducted entirely on-Site, with the exception of any permits required by the State Regulations Governing the Construction of Water Wells promulgated by DNREC for the placement and installation of any new water wells and any new monitoring wells. However, the Non-Owner Settling Defendants shall ensure that all portions of the Work shall meet the substantive requirements of any applicable or relevant and appropriate requirement subject to EPA's right of review and approval. Where any portion of any off-Site Work

requires a federal, state, or local permit or approval, Non-Owner Settling Defendants shall timely submit complete applications and take all other actions necessary to obtain all such permits or approvals.

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

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

E. Notice of Obligations to Successors-in-Title

1. Within 15 days after the date of entry of this Consent Decree, the Owner Settling Defendants shall record a certified copy of this Consent Decree with the office of the Recorder of Deeds, or other office where land ownership and transfer records are maintained for real property, for Kent County, Delaware. Thereafter, the Owner Settling Defendants shall ensure that each deed, title, or other instrument of conveyance for property included in the Site shall contain a notice, as approved by EPA, stating that the property is subject to this Consent Decree and any lien held by the United States pursuant to Section 107(1) of CERCLA, 42 U.S.C. § 9607(1), and shall reference the recorded location of the Consent Decree and

any restrictions applicable to the property under this Consent Decree.

2. Any deed, title, easement, other instrument of conveyance for, or any other instrument granting a leasehold interest in, property included in the Site currently owned and/or controlled by any Settling Defendant, shall include a covenant enforceable under State law that (i) the United States and its representatives shall have access at all reasonable times to the Site for purposes of effectuating and monitoring compliance with the terms of this Consent Decree; (ii) the grantee shall not interfere with, obstruct or disturb the performance, support or supervision of any remedial or response actions taken or to be taken at the Site, including any Operation and Maintenance activities and (iii) the grantee shall inform any person or entity that subsequently acquires any title, easement, leasehold or other interest in the Site or any portion thereof from such grantee of the requirements, conditions and operative effect of Section X (Access).

3. The obligations of each Owner Settling Defendant with respect to the provision of access under Section X (Access) and the related covenants set forth in Section V.E.2 above, and the implementation of institutional controls as provided in the ROD and Appendix C shall run with the land and be binding upon any and all such Owner Settling Defendants and any and all persons who subsequently acquire any such interest (hereinafter "Successors-in-Title"). Within 15 days after the entry of this

Consent Decree, each Owner Settling Defendant shall record, in full compliance with the requirements of State and local law, at the office of the Recorder of Deeds for Kent County, Delaware, or other office where land ownership and transfer records are maintained for the property, a notice of obligation to provide access and related covenants as more fully described in Paragraph 2 above.

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

**VI. PERFORMANCE OF THE WORK BY NON-OWNER
SETTLING DEFENDANTS AND PLACEMENT OF DEED
RESTRICTIONS BY OWNER SETTLING DEFENDANTS**

A. Selection of Contractors

1. All aspects of the Work to be performed by Non-Owner Settling Defendants pursuant to Sections VI (Performance of the Work by Non-Owner Settling Defendants and Placement of Deed Restrictions by Owner Settling Defendants), VII (Additional Response Actions), VIII (U.S. EPA Periodic Review), IX (Quality Assurance), and XVI (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor. The Non-Owner Settling Defendants have selected, and EPA has accepted, after a reasonable opportunity for review and comment by the State, Clean Sites, Inc., 1199 N. Fairfax St., Alexandria, Virginia 22314, as the Supervising Contractor. If at any time in the future Non-Owner Settling Defendants propose to change a Supervising Contractor, Non-Owner Settling Defendants shall give such notice to EPA, shall submit in writing the name, title, and qualifications of any contractor proposed to be the new Supervising Contractor, and shall obtain acceptance from EPA, after a reasonable opportunity for review and comment by the State, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

2. EPA will notify Non-Owner Settling Defendants in writing of its acceptance or disapproval of a proposed replacement Supervising Contractor. If EPA disapproves of the selection of any contractor as Supervising Contractor, Non-Owner

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

3. After the Remedial Design Work Plan or Remedial Action Work Plan is approved and prior to commencement of any Work thereunder, the Non-Owner Settling Defendants shall submit to EPA for acceptance the names and qualifications of any additional contractors and subcontractors. Non-Owner Settling Defendants have selected, and EPA has accepted, ERM, Inc., 855 Springdale Drive, Exton, Pennsylvania 19341, as the entity responsible for completion of Remedial Design submittals (the "Remedial Design Professional"). The Remedial Design Professional or the Supervising Contractor shall provide a Professional Engineer or a qualified engineer under the supervision of a Professional Engineer to be present at the Site during construction to ensure that the Work is performed in accordance with the approved Remedial Design submittal(s). EPA retains the right to disapprove any additional contractors and subcontractors selected to perform the Work. Within fourteen (14) days of receipt by EPA of the names of the additional

contractors or subcontractors, EPA will notify Non-Owner Settling Defendants of its acceptance or disapproval of the selected additional contractors or subcontractors. If EPA disapproves any additional contractor or subcontractor, Non-Owner Settling Defendants may submit further information to EPA giving reasons why the additional contractor or subcontractor should be accepted. Within fourteen (14) days of the receipt of the notice of disapproval, Non-Owner Settling Defendants shall notify the United States of the name and qualifications of a replacement additional contractor or subcontractor. If at any time during the pendency of this Consent Decree a decision is made by Non-Owner Settling Defendants to retain a substitute additional contractor or subcontractor, selection of the substitute shall be governed by the provisions of this Paragraph A.

B. Remedial Design/Remedial Action

1. Within 14 days after the effective date of this Consent Decree, the Non-Owner Settling Defendants shall submit to EPA for approval a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan"). The Remedial Design Work Plan shall provide for the design of the remedy as set forth in the ROD in accordance with Appendix C and provide for the monitoring set forth in Appendix D and, upon its approval by EPA, shall be incorporated into and become enforceable under this Consent Decree. Within 14 days after the effective date of this Consent Decree, the Non-Owner Settling Defendants shall submit to EPA for review a Health and Safety Plan for field

design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

2. The Remedial Design Work Plan shall include plans, schedules, and methodologies for implementation of all remedial design and pre-design tasks including, but not limited to: (1) a Remedial Design Permitting Requirements Plan; (2) a Remedial Design Contingency Plan; and (3) plans and schedules for the preparation and submission of preliminary, pre-final and final design submittals. In addition, the Remedial Design Work Plan shall include an expeditious schedule for completion of all components of the Remedial Design.

3. Upon approval of the Remedial Design Work Plan and acceptance of the Health and Safety Plan by EPA (after a reasonable opportunity for review and comment by the State), Non-Owner Settling Defendants shall implement the Remedial Design Work Plan in accordance with the schedules and methodologies contained therein. The Non-Owner Settling Defendants shall submit all plans, submittals, and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule therein for review and approval pursuant to Section XII (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, Non-Owner Settling Defendants shall not commence activities at the Site prior to approval of the Remedial Design Work Plan.

4. The preliminary design submittal required under

Paragraph B.2, above, shall include, at a minimum, the following:

- (1) design criteria; (2) results of additional field sampling;
- (3) project delivery strategy; (4) preliminary plans, drawings and sketches; (5) required specifications in outline form; and
- (6) preliminary construction schedule.

5. The pre-final and final design submittals required under Paragraph B.2, above, shall each include, at a minimum, the following plans, as well as expeditious schedules and specific methodologies for implementation of these plans: (1) final designs and specifications for the Remedial Action; (2) an Operation and Maintenance Plan; (3) a Remedial Action Construction Plan and schedule; (4) a Remedial Action Construction Quality Assurance Plan (CQAP); (5) a Sampling and Analysis Plan (SAP) prepared in accordance with Section IX (Quality Assurance), which shall include, but not be limited to, a Field Sampling Plan (directed at measuring progress towards meeting Performance Standards) and a Quality Assurance Project Plan (QAPjP) ; (6) complete specifications for preparation of a Health and Safety Plan for field activities required by the pre-final/final design; (7) complete specifications for preparation of procedures and plans for the decontamination of equipment and disposal of contaminated materials (the "Decontamination Plan"); (8) a Remedial Action Permitting Requirements Plan; and (9) a Remedial Action Contingency Plan. Non-Owner Settling Defendants shall ensure that specifications required under item (6), above, as accepted by EPA, and under item (7), above, as approved by

EPA, are met by the Non-Owner Settling Defendants' contractor(s) in preparing the Health and Safety Plan and the Decontamination Plan, respectively. The Health and Safety Plan for field activities shall be submitted by Non-Owner Settling Defendants for acceptance and the Decontamination Plan shall be submitted by Non-Owner Settling Defendants for approval in accordance with the schedule set forth in the final design submittal, and upon acceptance of such Health and Safety Plan and approval of the Decontamination Plan, such Plans shall be incorporated in, and enforceable as part of, the Remedial Action Work Plan. The CQAP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify an Independent Quality Assurance Team (IQAT) to conduct a quality assurance program during the construction phase of the project. The IQAT shall be responsible for examining and testing various materials, procedures and equipment during implementation of the construction activities. The IQAT shall perform on-Site inspections of the Work to assess compliance with project standards, verify that the Construction Quality Assurance Plan is implemented, and report to the Non-Owner Settling Defendants and EPA the results of all inspections.

6. Upon approval, approval upon conditions, or modification by EPA, as provided in Paragraphs B and D of Section XII, below, of all components of the final design submittal (after reasonable opportunity for review and comment by the State), the final design submittal shall serve as the Remedial

Action Work Plan and shall be incorporated into and become enforceable as such under this Consent Decree. The Non-Owner Settling Defendants shall implement the activities required under the Remedial Action Work Plan in accordance with the schedules and methodologies contained therein.

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

C. The Work performed by the Non-Owner Settling Defendants pursuant to this Consent Decree shall, at a minimum, achieve the Performance Standards, as set forth in Appendix C.

D. Non-Owner Settling Defendants acknowledge and agree that nothing in this Consent Decree or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements in the Remedial Design and Remedial Action Work Plans will achieve the Performance Standards as set forth in Appendix C. Such compliance shall not foreclose Plaintiff from seeking compliance with all terms and conditions of this Consent Decree.

E. Non-Owner Settling Defendants shall, prior to any off-

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

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

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

F. In the event EPA determines that Non-Owner Settling Defendants have failed to implement any provisions of the Work in an adequate or timely manner, EPA shall give written notice of such determination to the Non-Owner Settling Defendants and may perform any and all portions of the Work as EPA determines necessary. Non-Owner Settling Defendants may dispute EPA's determination that the Non-Owner Settling Defendants failed to implement a provision of the Work in an adequate or timely manner only by invoking the procedures set forth in Paragraphs B through D of Section XX (Dispute Resolution). Such dispute shall be resolved on the administrative record. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs for the purposes of Section XVII (Reimbursement of Response Costs).

G. Within thirty (30) days after the effective date of this Consent Decree, each of the Owner Settling Defendants shall submit to EPA for approval and to the Non-Owner Settling Defendants for review, proposed language for the deed restrictions to be placed on that part of the Site owned by such Owner Settling Defendant, respectively, to limit the future uses of the property constituting the Site as provided by the ROD. The deed restrictions shall prohibit any type of activity that could disturb the landfill surfaces or the underlying waste at the Site, or in any way increase the risk of exposure to Site contaminants. Within sixty (60) days of receipt by Owner Settling Defendants of approval from EPA, each Owner Settling

Defendant shall record such deed restrictions in accordance with applicable law in the office of the Recorder of Deeds, or other office where land ownership and transfer records are maintained for real property, for Kent County, Delaware, and any other office as required by applicable law, and shall provide EPA with a copy of the recorded deed and deed restrictions.

H. The Non-Owner Settling Defendants shall undertake monitoring at Landfill No. 1 at the Site, as set forth in Appendix D, in addition to the monitoring required by the ROD.

VII. ADDITIONAL RESPONSE ACTIONS

A. In the event that EPA or the Non-Owner Settling Defendants determine(s) that additional response actions are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD, notification of such additional response actions shall be provided by EPA to the Non-Owner Settling Defendants' Project Coordinator and the Owner Settling Defendants or by Non-Owner Settling Defendants to the EPA Remedial Project Manager and the Owner Settling Defendants.

B. Within 30 days (or such longer time as may be specified by EPA) of receipt of notice from EPA pursuant to Paragraph A of this Section that additional response actions are necessary, Non-Owner Settling Defendants shall submit for approval by EPA a work plan for the additional response actions. The plan shall conform to the applicable requirements of Section VI (Performance of the Work by Non-Owner Settling Defendants and Placement of Deed

Restrictions by Owner Settling Defendants). Upon approval of the plan pursuant to Section XII (Submissions Requiring Agency Approval), after reasonable opportunity for review and comment by the State, Non-Owner Settling Defendants shall implement the plan for additional response actions in accordance with the schedule contained therein.

C. Any additional response actions that Non-Owner Settling Defendants determine are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD shall be subject to approval by EPA, after reasonable opportunity for review and comment by the State, and, if authorized by EPA, shall be completed by Non-Owner Settling Defendants in accordance with plans, specifications, and schedules approved by EPA pursuant to Section XII (Submissions Requiring Agency Approval).

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

E. Non-Owner Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that additional response actions are necessary to

meet the Performance Standards or to carry out the remedy selected in the ROD. Such a dispute shall be resolved pursuant to Section XX.D of this Consent Decree.

F. The Non-Owner Settling Defendants have agreed under Paragraph H of Section VI of this Consent Decree to undertake certain monitoring at Landfill No. 1 at the Site, as set forth in Appendix D, in addition to the monitoring required by the ROD. The United States Department of the Interior and the United States National Oceanic and Atmospheric Administration of the Department of Commerce (collectively, the "Federal Trustees") will advise the Non-Owner Settling Defendants and/or EPA if they believe that the results of the monitoring show a need for any additional remedial activity beyond that required by the ROD and this Consent Decree. It is understood that the Non-Owner Settling Defendants do not commit under this Consent Decree to undertake any such remedial activity, but they do agree to negotiate in good faith the undertaking of any such remedial activity. If the Federal Trustees and the Non-Owner Settling Defendants should fail to reach agreement concerning the undertaking of such remedial activity, it is understood that the Federal Trustees and the Non-Owner Settling Defendants reserve their respective rights with respect to such remediation.

VIII. U.S. EPA PERIODIC REVIEW

A. Non-Owner Settling Defendants shall conduct any studies and investigations as requested by EPA in order to permit EPA to

conduct reviews at least every five years as required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations. EPA will discuss with Non-Owner Settling Defendants any request to conduct any such studies and investigations pursuant to this Paragraph prior to requesting that the studies and investigations be conducted.

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

C. If the Regional Administrator, EPA Region III, or his/her delegate determines that information received, in whole or in part, during the review conducted pursuant to Section 121(c) of CERCLA, indicates that the Remedial Action is not protective of human health and the environment, the Non-Owner Settling Defendants shall undertake any additional response actions EPA has determined are appropriate and that are not barred by the Covenant Not to Sue provided in Section XXII of this Consent Decree. However, the Non-Owner Settling Defendants may invoke the procedures set forth in Section XX (Dispute

Resolution) to dispute (1) EPA's determination that the Remedial Action is not protective of human health and the environment, (2) EPA's selection of the additional response action ordered, or (3) EPA's determination that the additional response action ordered is not barred by the Covenant Not to Sue in Section XXII of this Consent Decree. Such a dispute shall be resolved pursuant to Paragraphs B through D of Section XX of this Consent Decree.

D. Within sixty (60) days after notice of EPA's determination that additional response actions are necessary or resolution of any dispute pursuant to Paragraph C of this Section VIII, whichever is later, Non-Owner Settling Defendants shall submit plans for design and implementation of any additional response actions they are required to perform in accordance with the applicable procedures set forth in Sections VI (Performance of the Work by Non-Owner Settling Defendants and Placement of Deed Restrictions by Owner Settling Defendants) and XII (Submissions Requiring Agency Approval) and, upon approval of such plans by EPA, shall complete the additional response action in accordance with such plans and any schedules contained therein.

IX. QUALITY ASSURANCE

A. While conducting all sample collection and analysis activities required by this Consent Decree, the Non-Owner Settling Defendants shall implement quality assurance, quality control and chain of custody procedures in accordance with

"Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA", 1988 (OSWER Directive 9355.3-01); "EPA NEIC Policies and Procedures Manual", May 1978, revised May 1986 (EPA 330/978-001-R); "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans", December 1980 (QAMS 005/80); "A Compendium of Superfund Field Operations Methods", December 1987 (OSWER Directive 9355-0-14); "Data Quality Objectives for Remedial Response Activities", March 1987 (OSWER Directive 9355.0-7B); EPA's "Guidelines and Specifications for Preparing Quality Assurance Program Documentation", June 1, 1987; and amendments to these guidelines, or as approved by EPA pursuant to this Consent Decree.

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

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

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

all protocols described therein take precedence over protocols listed in the Laboratory QAPP.

2. Ensure that EPA personnel and/or its authorized representatives are allowed reasonable access to the laboratory(ies), records and personnel utilized by the Non-Owner Settling Defendants in implementing this Consent Decree.

3. Prepare a SAP, consisting of a Quality Assurance Project Plan (QAPjP) and a Field Sampling Plan (FSP), for sample collection, transportation, analysis, validation and reporting to be conducted pursuant to this Consent Decree. The FSP shall include, but not be limited to, a Sediment, Surface Water and Ground Water Monitoring Plan providing for sampling of sediments (as set forth in Appendix D), surface water (as set forth in the ROD and Appendix D), ground water monitoring wells and, if determined by EPA to be necessary, residential wells. The SAP shall be submitted as part of the pre-final and final design submittals, as provided in Section VI.B.5, above, to the EPA Remedial Project Manager for review and approval prior to commencing sampling and analysis. Each plan shall specify, for the phase of activity addressed, the data quality objectives (DQOs), sample collection and transportation procedures, data analysis methods, data reduction, data review, and reporting procedures. Selection of analytical methods shall be justified in conjunction with the DQOs. The guidelines referenced in Paragraph A, above, shall be followed in the preparation of the SAP; additional guidance may be provided by EPA when applicable

and/or requested by the Non-Owner Settling Defendants.

4. Ensure that the laboratory(ies) analyzing samples pursuant to this Consent Decree uses appropriate methods. If EPA Contract Lab Program (CLP) methods are selected, the laboratory(ies) shall use these methods and submit deliverables delineated in the current "Statement of Work of the EPA Contract Lab Program." If non-CLP methods are selected, all constituents and physical parameters shall be analyzed using methods that are specified (method and reference) and justified in the SAP. Non-CLP methods shall be fully described in the QAPjP and approved by the EPA Remedial Project Manager prior to conducting any sampling and analysis. This description shall include, at a minimum, the matrix, calibration, Quality Control (QC) samples (type and frequency), corrective measures, and deliverables.

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

6. At the request of EPA, conduct one or more audits of the selected laboratory(ies) to verify analytical capability and compliance with the SAP. Auditors shall conduct lab audits

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

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

8. Provide data validation of analyses completed by the laboratory(ies), to determine data usability. If the data is derived by CLP methods, the data validation shall be performed in

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

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

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

X. ACCESS

A. Commencing upon the date of lodging of this Consent Decree, and to the extent the property is owned or access to the property is controlled by Settling Defendants, the Settling Defendants agree that the United States and its representatives, including EPA and its contractors, shall have access at all reasonable times to the Site and any other property under the control of the Settling Defendants to which access is required for the implementation of, and all Work under, this Consent Decree, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

1. Monitoring the Work;
2. Verifying any data or information submitted to the United States;
3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples;
5. Assessing the need for, planning, or implementing additional response actions at or near the Site;
6. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Non-Owner Settling Defendants or their agents; and
7. Assessing Non-Owner Settling Defendants' compliance with this Consent Decree.

Owner Settling Defendants agree that to the extent they own or control access to the property constituting the Site or any

other property to which access is required for the implementation of, and all Work under, this Consent Decree, the Non-Owner Settling Defendants, and their representatives and contractors, shall have the access set forth above.

B. To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Settling Defendants, Settling Defendants shall use best efforts to secure from such persons access for themselves, as well as for the United States and its representatives, including, but not limited to, EPA and its contractors, as necessary to effectuate this Consent Decree. If any access required to complete the Work is not obtained within 45 days of the date of entry of this Consent Decree, or within 45 days of the date EPA notifies the Non-Owner Settling Defendants in writing that additional access beyond that previously secured is necessary, Non-Owner Settling Defendants shall promptly notify the EPA, and shall include in that notification a summary of the steps Non-Owner Settling Defendants have taken to attempt to obtain access. The United States may, in its unreviewable discretion, assist Non-Owner Settling Defendants in obtaining access. Non-Owner Settling Defendants shall reimburse the United States, in accordance with the procedures in Section XVII (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining access to any properties other than properties presently owned by Owner Settling Defendants.

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

XI. REPORTING REQUIREMENTS

A. In addition to any other requirement of this Consent Decree, Non-Owner Settling Defendants shall submit to EPA and the State two (2) copies each of a written monthly progress report that: (1) describes the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (2) includes all results of sampling and tests and all other data received or generated by Non-Owner Settling Defendants or their contractors or agents in the previous month; (3) identifies all deliverables required by this Consent Decree that were submitted during the previous month; (4) describes all activities which are scheduled for the next month; (5) describes project status and whether the Work is proceeding in compliance with the schedule for implementation of the Work, including problems that may affect the schedule and a description of efforts made to mitigate any delays or anticipated delays; and (6) describes all community relations activities undertaken by the Non-Owner Settling Defendants during the previous month and to be undertaken in the next month. Non-Owner Settling Defendants shall submit these progress reports to EPA by the fifteenth (15th) day of every month following the entry of this

Consent Decree until EPA notifies the Non-Owner Settling Defendants pursuant to Paragraph A.2 of Section XV (Certification of Completion). After EPA has notified the Non-Owner Settling Defendants pursuant to Paragraph A.2 of Section XV (Certification of Completion), the Non-Owner Settling Defendants shall submit two (2) copies of a written progress report to EPA semi-annually as set forth in the O & M Plan until EPA notifies the Non-Owner Settling Defendants pursuant to Paragraph B.2 of Section XV (Certification of Completion). If requested by EPA, Non-Owner Settling Defendants shall also provide oral and/or written briefings for EPA to discuss the progress of the Work.

B. The Non-Owner Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, implementation of work plans, no later than seven (7) days prior to the performance of the activity. Notwithstanding the foregoing, the Non-Owner Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of data collection activities as soon as possible, but in any event, no less than seven (7) days prior to the performance of the activity, in order to allow EPA sufficient time to schedule laboratory analysis.

C. In addition to the reporting required by Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11004, upon the occurrence of any event during performance of

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

D. Except as otherwise provided in this Consent Decree, Non-Owner Settling Defendants shall submit 5 copies of all plans, reports, and data required by the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Non-Owner Settling Defendants shall simultaneously submit 2 copies of all such plans, reports and data to the State.

E. Plans, design documents, proposals, reports or other

documents shall be signed by a Duly Authorized Representative of each of the Non-Owner Settling Defendants certifying that the information contained in the submitted document is true, accurate and complete, as set forth below. The Remedial Design Work Plan, Remedial Action Work Plan, and any other work plan approved by EPA pursuant to this Consent Decree shall specify which documents shall be so certified. The certification statement accompanying the document shall state the following:

"I certify, after thorough investigation and to the best of my knowledge, information and belief, that the information contained in or accompanying this document is true, accurate and complete. As to the identified portion(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify, after thorough investigation and to the best of my knowledge, information and belief, as the Duly Authorized Representative having direct or indirect supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate and complete."

In those instances where a Registered Professional Engineer ("RPE") is required to make a certification pursuant to this Paragraph E and such certification requires the professional opinion of such RPE, the RPE may state the following in lieu of the certification statement above:

"In my professional opinion, after thorough investigation and to the best of my knowledge, information and belief, the information contained in or accompanying this document is true, accurate and complete. As to the identified portion(s) of this document for which I cannot personally verify its (their) truth and accuracy, in my professional opinion, after thorough investigation and to the best of my knowledge, information and belief, as the Registered Professional Engineer having direct or indirect supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, this information is true, accurate and complete."

XII. SUBMISSIONS REQUIRING AGENCY APPROVAL

A. Any plan, report or other item which is required to be submitted by the Non-Owner Settling Defendants or Owner Settling Defendants for approval by EPA pursuant to this Consent Decree shall be simultaneously submitted to the State by the Non-Owner Settling Defendants or Owner Settling Defendants, respectively. After review of any such plan, report or other item, EPA shall, after reasonable opportunity for review and comment by the State:

- (1) approve, in whole or in part, the submission;
- (2) approve the submission upon specified conditions;
- (3) modify the submission to cure the deficiencies;
- (4) direct that the Non-Owner Settling

Defendants or Owner Settling Defendants, as the case may be, modify the submission; (5) disapprove, in whole or in part, the submission, notifying the Non-Owner Settling Defendants or Owner Settling Defendants, as the case may be, of deficiencies; or (6) any combination of the above.

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

C. Upon receipt of a notice of disapproval or a notice requiring a modification, Non-Owner Settling Defendants or Owner Settling Defendants, as the case may be, shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval or a notice requiring a modification, Non-Owner Settling Defendants or Owner Settling Defendants, as the case may be, shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

D. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Non-Owner Settling Defendants or Owner Settling

Defendants, as the case may be, to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to amend or develop the plan, report or other item.

Subject only to their right to invoke procedures set forth in Section XX (Dispute Resolution), Non-Owner Settling Defendants or Owner Settling Defendants, as the case may be, shall implement any such plan, report, or item as amended or developed by EPA.

Implementation of any non-deficient portion of a submission shall not relieve Non-Owner Settling Defendants or Owner Settling Defendants, as the case may be, of any liability for stipulated penalties under Section XXI (Stipulated Penalties) for any violations of this Consent Decree relating to any deficient portion of the submission.

E. If a resubmitted plan, report, or item is disapproved or modified by EPA because it is deemed substantially deficient by EPA, Non-Owner Settling Defendants or Owner Settling Defendants, as the case may be, shall be deemed to be in violation of the provision of this Consent Decree requiring the Non-Owner Settling Defendants or Owner Settling Defendants, as the case may be, to submit such plan, report, or item, unless the Non-Owner Settling Defendants or Owner Settling Defendants, as the case may be, invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as

provided in Section XXI (Stipulated Penalties).

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

XIII. PROJECT COORDINATOR/REMEDIAL PROJECT MANAGER

A. EPA has selected a Remedial Project Manager for the Site. The EPA Remedial Project Manager is the EPA representative to whom notices and other submissions are to be submitted pursuant to Section XXVII (Notices and Submissions) of this Consent Decree. Non-Owner Settling Defendants have selected a Project Coordinator for the Site. The Non-Owner Settling Defendants' Project Coordinator is Richard Sobel, Clean Sites, Inc., 1199 North Fairfax St., Alexandria, Virginia 22314, telephone number (703) 739-1221. EPA shall have the right to change its Remedial Project Manager and Non-Owner Settling Defendants shall have the right to change their Project Coordinator. Any such change shall be accomplished by notifying the other party in writing at least five (5) working days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. The Non-Owner Settling

Defendants' Project Coordinator shall be subject to acceptance by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Non-Owner Settling Defendants' Project Coordinator shall not be acting as an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

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

C. The EPA Remedial Project Manager and the Non-Owner Settling Defendants' Project Coordinator will meet as requested by EPA.

XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

A. By the effective date of this Consent Decree, Non-Owner Settling Defendants shall have established an escrow account ("Escrow Account") to implement the Remedial Design and Remedial Action and to otherwise carry out the terms of this Consent Decree and shall have contributed, by the effective date of this Consent Decree, at least \$250,000 to this Escrow Account for implementation of the Work. The money in this Escrow Fund shall be used exclusively to pay expenses incurred pursuant to this Consent Decree.

B. Non-Owner Settling Defendants shall make additional payments to the Escrow Account periodically, as necessary, so that the balance in the Escrow Account will be adequate to make payments on a current basis to fulfill the obligations of the Non-Owner Settling Defendants for the next six (6) month period during the Remedial Design and Remedial Action phases and the next one (1) year period during the O&M period.

C. Non-Owner Settling Defendants have designated Clean Sites, Inc., as the Escrow Agent to manage this Escrow Account. The Escrow Agent shall prepare six (6) month cash flow projections during the Remedial Design and Remedial Action phases that project the level of funds that will be necessary for the Remedial Design and Remedial Action for the succeeding six (6) month period. A one-year cash flow projection shall be provided by Clean Sites, Inc. at the commencement of the O & M period and each succeeding year thereafter. If the amount of money in the

Escrow Account is less than such projected level, the Non-Owner Settling Defendants shall make the necessary additional payments in sufficient time to assure the uninterrupted progress and timely completion of the Remedial Design, Remedial Action, and O & M.

D. The Escrow Account agreement shall be subject to approval by EPA as to form. Non-Owner Settling Defendants shall provide EPA with a written report from the Escrow Agent of the establishment of and account balances in the Escrow Account within thirty (30) days of the effective date of this Consent Decree and every six (6) months thereafter until EPA notifies Non-Owner Settling Defendants pursuant to Paragraph A.2 of Section XV (Certification of Completion); and annually thereafter until EPA notifies Non-Owner Settling Defendants pursuant to Paragraph B.2 of Section XV (Certification of Completion).

XV. CERTIFICATION OF COMPLETION

A. Completion of the Remedial Action

1. Within 90 days after Non-Owner Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Non-Owner Settling Defendants shall so certify to the United States and shall schedule and conduct a pre-certification inspection to be attended by Non-Owner Settling Defendants and EPA. If, after the pre-certification inspection, the Non-Owner Settling Defendants still believe that the Remedial Action has been fully performed

and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, and to the State for an opportunity for review and comment, pursuant to Section XII (Submissions Requiring Agency Approval) within 30 days of the inspection. In the report, a registered professional engineer ("RPE") shall certify in the format set forth in Section XI.E that the Remedial Action has been completed in full satisfaction of the requirements of the Remedial Design Work Plan and the Remedial Action Work Plan, and a Duly Authorized Representative of each of the Non-Owner Settling Defendants shall certify in the format set forth in Section XI.E that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a RPE and certified as required by Section XI.E. If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Non-Owner Settling Defendants in writing, within ninety (90) days of receipt by EPA of the written report from the Non-Owner Settling Defendants, of the activities that must be undertaken to complete the Remedial Action and achieve the Performance Standards. EPA will set forth in the notice a schedule for performance of such

activities consistent with this Consent Decree or require the Non-Owner Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Non-Owner Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution). Failure by EPA to so notify Non-Owner Settling Defendants within ninety (90) days of receipt by EPA of the written report from Non-Owner Settling Defendants shall not constitute a determination by EPA that no further activities must be undertaken to complete the Remedial Action and achieve the Performance Standards.

2. If EPA concludes, based on the initial or any subsequent written report by the Non-Owner Settling Defendants requesting Certification of Completion, and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been fully performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to the Settling Defendants within ninety (90) days of receipt by EPA of such initial or subsequent written report from the Non-Owner Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section

XXII (Covenants Not to Sue by Plaintiff). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree that continue beyond the Certification of Completion, including, but not limited to, access, Operation and Maintenance, record retention, indemnification, insurance, payment of Future Response Costs and penalties, and any work to be conducted under Section VII (Additional Response Actions), Section VIII (U.S. EPA Periodic Review), and Section XVI (Emergency Response). Failure by EPA to so certify to the Settling Defendants within ninety (90) days of receipt by EPA of the initial or subsequent written report from the Non-Owner Settling Defendants shall not constitute certification by EPA that the Remedial Action has been fully performed in accordance with this Consent Decree and that the Performance Standards have been achieved.

B. Completion of the Work

1. Within 90 days after Non-Owner Settling Defendants conclude that all phases of the Work (including O & M), with the exception of the payment of Future Response Costs associated with this Paragraph, have been fully performed, Non-Owner Settling Defendants shall so certify to the United States by submitting a written report to EPA for approval. In the report, a RPE shall certify in the format set forth in Section XI.E that the Work has been completed in full satisfaction of the requirements of the Remedial Design Work Plan and the Remedial Action Work Plan, and a Duly Authorized Representative of each Non-Owner Settling

Defendant shall certify in the format set forth in Section XI.E that the Work has been completed in full satisfaction of the requirements of this Consent Decree. If, after review of the written report, EPA, after a reasonable opportunity for review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Non-Owner Settling Defendants, within ninety (90) days of receipt by EPA of the written report from the Non-Owner Settling Defendants, in writing of the activities that must be undertaken to complete the Work. EPA will set forth in the notice a schedule for performance of such activities consistent with this Consent Decree or require the Non-Owner Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Non-Owner Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution). Failure by EPA to so notify Non-Owner Settling Defendants within ninety (90) days of receipt by EPA of the written report from the Non-Owner Settling Defendants shall not constitute a determination by EPA that no further activities must be undertaken to complete the Work.

2. If EPA concludes, based on the initial or any subsequent written report by the Non-Owner Settling Defendants requesting Certification of Completion, and after a reasonable

opportunity for review and comment by the State, that the Work has been fully performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in writing within ninety (90) days of receipt by EPA of such initial or subsequent written report from the Non-Owner Settling Defendants. Failure by EPA to so notify Settling Defendants within ninety (90) days of receipt by EPA of such initial or subsequent written report shall not constitute a determination by EPA that the Work has been fully performed in accordance with this Consent Decree.

XVI. EMERGENCY RESPONSE

A. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material that constitutes an emergency situation or may present an immediate threat to the public health or welfare or the environment, Non-Owner Settling Defendants shall, subject to Paragraph B of this Section XVI, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA Remedial Project Manager, or, if the EPA Remedial Project Manager is unavailable, the Section Chief of the Delaware/Maryland Section of the EPA Region III Superfund Remedial Branch. If neither of these persons is available, the Non-Owner Settling Defendants shall notify the EPA Region III Emergency Hotline at (215) 597-9898. Non-Owner Settling Defendants shall take such actions in consultation with the EPA Remedial Project Manager or other

available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, or any other applicable plans or documents. In the event that the Non-Owner Settling Defendants fail to take appropriate response action as required by this Section, and EPA takes such action, Non-Owner Settling Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVII (Reimbursement of Response Costs).

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

XVII. REIMBURSEMENT OF RESPONSE COSTS

A. Within 30 days of the effective date of this Consent Decree, Non-Owner Settling Defendants shall pay to the United States the sum of \$101,834.89 in the form of a certified check or checks made payable to "EPA Hazardous Substances Superfund," and referencing CERCLA Number 3-K9 and DOJ Case Number 90-11-2-658 in reimbursement of all Past Response Costs. The Non-Owner Settling Defendants shall forward the certified check(s) to United States Environmental Protection Agency, Region III, Attention: Superfund Accounting, P.O. Box 360515M, Pittsburgh, PA 15251 and shall send copies of the check to the United States and the Regional Hearing

Clerk (3RC00), United States Environmental Protection Agency,
Region III, 841 Chestnut Building, Philadelphia, PA 19107.

B. Within 30 days of the effective date of this Consent Decree, Non-Owner Settling Defendants shall pay to the United States the sum of \$80,000 (the "Federal Trustees' Costs"), in the form of a certified check made payable to the "U.S. Department of Commerce, NOAA" and shall send such check to:

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

The check shall reference CERCLA Number 3-K9 and DOJ Case Number 90-11-2-658. The Non-Owner Settling Defendants shall send copies of the check to:

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

and,

Director, Office of Environmental Affairs
U.S. Department of the Interior
1849 C Street, N.W., Room 2340
Washington, D.C. 20240

The above noted payment shall be considered full reimbursement to the Federal Trustees of their costs to restore any and all damages to wetlands at the Site as a result of past disposal or any Work performed under this Consent Decree, and for all past and future response costs of the Federal Trustees as to the wetland restoration project and to the monitoring work undertaken pursuant to Paragraph H of Section VI of this Consent Decree and

set forth in Appendix D. It is understood that this payment does not cover any future response costs that the Federal Trustees may incur with respect to any future remedial work that might be required as a result of the monitoring work.

C. Non-Owner Settling Defendants shall reimburse the United States for all Future Response Costs not inconsistent with the National Contingency Plan incurred by the United States. The United States will send Non-Owner Settling Defendants on an annual basis a bill requiring payment that includes a cost summary setting forth direct and indirect costs incurred by the EPA and the Department of Justice, their contractors, and the State. The cost summary shall include a description of the work performed and the dates services were rendered by EPA's contractors relating to the costs included on each such bill. Non-Owner Settling Defendants shall make all payments within forty-five (45) days of Non-Owner Settling Defendants' receipt of each bill which includes a cost summary describing the work performed and dates services were rendered by any contractors, except as otherwise provided in Paragraph D of this Section. The Non-Owner Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph A of this Section.

D. Non-Owner Settling Defendants may contest payment of any Future Response Costs under Paragraph C of this Section if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs

that are inconsistent with the NCP. Such objection shall be made in writing within 45 days of receipt of the bill and must be sent to the United States pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Non-Owner Settling Defendants shall within the 45 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph A of this Section. Simultaneously, the Non-Owner Settling Defendants shall establish an interest bearing escrow account in a bank duly chartered in the Commonwealth of Virginia and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Non-Owner Settling Defendants shall send to the United States, as provided in Section XXVII (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established, a bank statement showing the initial balance of the escrow account, and a copy of the escrow agreement establishing the escrow account. Simultaneously with establishment of the escrow account, the Non-Owner Settling Defendants may initiate the Dispute Resolution procedures set forth in Section XX (Dispute Resolution). Failure to initiate the dispute resolution procedures set forth in

Section XX within the 45 day period following receipt of the bill shall be a waiver of Non-Owner Settling Defendants' right to initiate dispute resolution with respect to that issue. If the Non-Owner Settling Defendants fail to initiate the dispute resolution procedures set forth in Section XX within the 45 day period following receipt of the bill, then within 5 days of such 45th day, the Non-Owner Settling Defendants shall direct the escrow holder to remit the escrowed monies (with accrued interest) to the United States in the manner described in Paragraph A of this Section. If the United States prevails in the dispute, then within 5 days of the resolution of the dispute, the Non-Owner Settling Defendants shall direct the escrow holder to remit the escrowed monies (with accrued interest) to the United States in the manner described in Paragraph A of this Section. If the Non-Owner Settling Defendants prevail concerning any aspect of the contested costs, the Non-Owner Settling Defendants shall direct the escrow holder to remit payment for that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph A of this Section; Non-Owner Settling Defendants shall be disbursed the balance of the escrow account. The Dispute Resolution procedures set forth in this Paragraph D in conjunction with the procedures set forth in Section XX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Non-Owner Settling Defendants' obligation to reimburse the United States for its Future Response

Costs.

E. In the event that the payments required by Paragraphs A or B of this Section are not made within 30 days of the effective date of this Consent Decree or the payments required by Paragraph C of this Section within 45 days of the Non-Owner Settling Defendants' receipt of the bill, Non-Owner Settling Defendants shall pay interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest on Past Response Costs shall begin to accrue 30 days after the effective date of the Consent Decree. The interest on Future Response Costs shall begin to accrue 45 days after the date of Non-Owner Settling Defendants' receipt of the bill. Payments made under this Paragraph E shall be in addition to such other remedies or sanctions available to the United States by virtue of Non-Owner Settling Defendants' failure to make timely payments under this Section.

XVIII. INDEMNIFICATION AND INSURANCE

A. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's designated representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Non-Owner Settling Defendants and Owner Settling Defendants hereby indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of

action arising from, or on account of, acts or omissions of Non-Owner Settling Defendants or Owner Settling Defendants, respectively, their respective officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Non-Owner Settling Defendants or Owner Settling Defendants, respectively, as EPA's representatives under Section 104(e) of CERCLA and, with respect to Non-Owner Settling Defendants, any claim for just compensation arising out of performance of this Consent Decree, unless such claims arise solely and exclusively from the negligent actions or omissions of the United States in carrying out activities pursuant to this Consent Decree. The Non-Owner Settling Defendants shall not be liable to indemnify the United States for or from any claims or causes of action arising from, or on account of, acts or omissions of Owner Settling Defendants in carrying out activities pursuant to this Consent Decree and the Owner Settling Defendants shall not be liable to indemnify the United States for or from any claims or causes of action arising from, or on account of, acts or omissions of Non-Owner Settling Defendants in carrying out activities pursuant to this Consent Decree. Further, the Non-Owner Settling Defendants and Owner Settling Defendants agree to pay the United States all costs the United States incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising

from, or on account of, claims made against the United States based on acts or omissions of Non-Owner Settling Defendants or Owner Settling Defendants, respectively, their respective officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, unless such claims arise solely and exclusively from the negligent actions or omissions of the United States in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States.

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

of Settling Defendants and any person for performance of Work on or relating to the Site or performance of any other obligations of Settling Defendants under this Consent Decree, including, but not limited to, claims on account of construction delays.

Nothing in Paragraphs A or B of this Section XVIII shall be construed as or deemed a waiver of Settling Defendants' right to pursue an action against the United States under the Federal Tort Claims Act.

C. No later than 30 days after the effective date of this Consent Decree, Non-Owner Settling Defendants shall secure or shall ensure that their contractor(s) secure, and shall maintain or shall ensure that their contractor(s) maintain until one year from the date of EPA's certification of completion of the Remedial Action pursuant to Paragraph A.2 of Section XV (Certification of Completion), comprehensive general liability insurance with limits of five (5) million dollars and automobile liability insurance with limits of at least \$500,000. Non-Owner Settling Defendants shall ensure that all subcontractors secure and maintain for the term of their respective subcontracts comprehensive general liability insurance with limits of one (1) million dollars. Non-Owner Settling Defendants shall ensure that all subcontractors secure and maintain for the term of their respective subcontracts automobile liability insurance with limits of at least \$500,000. In addition, for the duration of this Consent Decree, Non-Owner Settling Defendants shall satisfy, and shall ensure that their contractors or subcontractors

satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Non-Owner Settling Defendants in furtherance of this Consent Decree. At least 15 days prior to commencement of the Work by any contractor or subcontractor under this Consent Decree, Non-Owner Settling Defendants shall provide to EPA certificates of such insurance. Non-Owner Settling Defendants shall resubmit such certificates each year on the anniversary of the effective date of this Consent Decree. If Non-Owner Settling Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to matters so insured by that contractor or subcontractor, Non-Owner Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor. Non-Owner Settling Defendants may satisfy the provisions of this Paragraph C if they submit to EPA for approval (1) a surety bond; (2) one or more letters of credit; or (3) a trust fund, in at least the amounts stated in this Paragraph C demonstrating that Non-Owner Settling Defendants are able to pay any claims arising out of Non-Owner Settling Defendants' performance of their obligations under this Consent Decree. In the event that EPA determines at any time that a financial assurance mechanism listed above that has been provided by Non-Owner Settling Defendants is inadequate,

Non-Owner Settling Defendants shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed above or obtain insurance as provided in this Paragraph C.

XIX. FORCE MAJEURE

A. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of each and every Non-Owner Settling Defendant or of any entity controlled by such Non-Owner Settling Defendants, including, but not limited to, their contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite the Non-Owner Settling Defendants' best efforts to fulfill the obligation. The requirement that the Non-Owner Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

B. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Non-Owner Settling Defendants shall notify by telephone the EPA Remedial Project

Manager or, in his or her absence, the Section Chief of the Delaware/Maryland Section of the EPA Region III Superfund Remedial Branch or, in the event both of EPA's designated representatives are unavailable, the EPA Region III Emergency Hotline at (215) 597-9898, within 48 hours of when the Non-Owner Settling Defendants or any one of them first knew or should have known that the event might cause a delay. Within 10 days thereafter, Non-Owner Settling Defendants shall provide in writing to EPA the reasons for the delay; the obligations and deadlines the Non-Owner Settling Defendants claim are affected by the force majeure event; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Non-Owner Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Non-Owner Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Non-Owner Settling Defendants shall include, with any notice, all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Non-Owner Settling Defendants from asserting any claim of force majeure for that event. Non-Owner Settling Defendants shall be deemed to have notice of any circumstance of which their contractors or subcontractors had or

should have had notice.

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

D. If the Non-Owner Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Non-Owner Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were

exercised to avoid and mitigate the effects of the delay, and that Non-Owner Settling Defendants complied with the requirements of Paragraphs A and B, above. If Non-Owner Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Non-Owner Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XX. DISPUTE RESOLUTION

A. Unless otherwise expressly provided for in this Consent Decree, the Dispute Resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree and shall apply to all provisions of this Consent Decree whether or not this Dispute Resolution provision is noted in conjunction with a particular provision. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that are not disputed.

B. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the Parties to the dispute. The dispute shall be considered to have arisen when one party notifies the other parties in writing that there is a dispute.

C. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 15 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written statement of their position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants.

D. Formal dispute resolution for disputes arising under the provisions of this Consent Decree which pertain to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of response actions performed pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions.

1. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position,

including supporting documentation, submitted pursuant to this Paragraph and Paragraph C, above.

2. After receipt of Settling Defendants' statement of position submitted pursuant to Paragraph C, above, EPA will serve on Settling Defendants its statement of position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA, in response to Settling Defendants' statement of position. Where appropriate, EPA may allow submission of supplemental statements of position by the Parties to the dispute.

3. The EPA Region III Associate Director of the Office of Superfund of the Hazardous Waste Management Division will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph D.1 of this Section. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraphs D.4 and D.5 of this Section.

4. Any administrative decision by EPA pursuant to Paragraph D.3 of this Section shall be reviewable by this Court, provided that a notice of judicial appeal under this Section XX is filed by the Settling Defendants with the Court and served on the United States within 15 days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this

Consent Decree. The United States may file a response to Settling Defendants' notice of judicial appeal.

5. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of EPA is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraphs D.1 and D.2 of this Section.

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

1. Following receipt of Settling Defendants' statement of position submitted pursuant to Paragraph C of this Section, the EPA Region III Associate Director of the Office of Superfund of the Hazardous Waste Management Division will issue a final decision resolving the dispute. The EPA's decision shall be binding on the Settling Defendants unless, within 15 days of receipt of the decision, the Settling Defendants file with the Court and serve on the United States a notice of judicial appeal setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' notice of judicial appeal.

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

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

XXI. STIPULATED PENALTIES

A. Subject to Paragraph L, below, of this Section XXI, Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs B and C of this Section to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section

XIX (Force Majeure). "Compliance" by Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

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

1. <u>Penalty Per Violation</u> <u>Per Day</u>	<u>Period of Noncompliance</u>
\$2,500	1st through 14th day
\$5,000	15th through 44th day
\$10,000	45th day and beyond

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

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

1. <u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 10th day
\$2,000	11th day and beyond

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

D. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Separate penalties shall accrue for each separate violation of this Consent Decree.

E. Following EPA's determination that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendants written notification of same and describe the noncompliance. However, penalties shall accrue as provided in the preceding Paragraph whether or not EPA has notified the Settling Defendants of a violation. EPA may send the Settling Defendants a written demand for the payment of the penalties.

F. All penalties owed to the United States under this section shall be due and payable within 45 days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XX (Dispute Resolution). All

payments under this Section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," shall be mailed to United States Environmental Protection Agency, Region III, Attention: Superfund Accounting, P.O. Box 360515M, Pittsburgh, PA 15251 and shall reference CERCLA Number 3-K9 and DOJ Case Number 90-11-2-658. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVII (Notices and Submissions).

G. Neither the invocation of Dispute Resolution procedures under Section XX (Dispute Resolution) nor the payment of penalties shall alter in any way Non-Owner Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree or Owner Settling Defendants' obligation to complete the performance of any of their obligations under this Consent Decree.

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

1. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties shall be paid to EPA within 30 days of the agreement or the receipt of EPA's decision or order;

2. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be

owed to the United States within 30 days of receipt of the Court's decision or order, except as provided in Paragraph H.3 below;

3. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owed to the United States, into an interest-bearing escrow account established in accordance with the procedures set forth in Section XVII.C within 30 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 30 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account, including interest, to EPA and/or Settling Defendants in accordance with the final appellate court decision.

I. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties and interest. Settling Defendants shall pay interest on the unpaid balance, which shall begin to accrue at the end of the thirty-day period following Settling Defendants' receipt from EPA of a demand for payment at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

However, nothing in this Section shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including,

but not limited to, penalties pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9622(1) and state law.

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

K. EPA may, in its unreviewable discretion, reduce or forego any stipulated penalties and in the exercise of such discretion may consider, among other things, the good faith efforts of the Settling Defendants to comply with the requirements of this Consent Decree. Decisions by EPA to reduce or forego stipulated penalties and decisions by EPA not to reduce or forego stipulated penalties shall not be subject to Section XX (Dispute Resolution) of this Consent Decree and shall not be otherwise subject to judicial review.

L. The Non-Owner Settling Defendants shall not be liable for stipulated penalties incurred by Owner Settling Defendants under this Consent Decree and the Owner Settling Defendants shall not be liable for stipulated penalties incurred by Non-Owner Settling Defendants under this Consent Decree.

XXII. COVENANTS NOT TO SUE BY PLAINTIFF

A. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraphs B, C, E, F and H of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to

Sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to Future Liability, the covenants not to sue described in the preceding sentence shall take effect, with respect to the Non-Owner Settling Defendants, upon the receipt by EPA of the payments required by Paragraph A of Section XVII (Reimbursement of Response Costs) and, with respect to each of the Owner Settling Defendants, upon the receipt by EPA of a copy of the recorded deed and deed restrictions for that part of the Site owned by such Owner Settling Defendant, respectively, pursuant to Section VI.G of this Consent Decree. With respect to Future Liability, these covenants not to sue shall take effect upon Certification of Completion of the Remedial Action by EPA pursuant to Paragraph A.2 of Section XV (Certification of Completion). Except as specifically provided in Paragraph F of this Section, the United States covenants not to sue Settling Defendants for any injury to, destruction of, or loss of natural resources, as defined by CERCLA, arising from injury to or destruction of wetlands at the Site, or for all past or future response costs of the Federal Trustees relating to the wetland restoration project and to the monitoring work set forth in Appendix D. The covenants not to sue described in the immediately preceding sentence shall take effect upon the receipt by the National Oceanic and Atmospheric Administration of the payment required by Paragraph B of Section XVII (Reimbursement of Response Costs) and the complete and satisfactory performance of the monitoring set forth in Appendix D. All of these covenants

not to sue are conditioned upon the complete and satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

B. United States' Pre-certification reservations.

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

- (i) conditions at the Site, previously unknown to the United States, are discovered after the entry of this Consent Decree, or
- (ii) information is received, in whole or in part, after the entry of this Consent Decree,

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

C. United States' Post-certification reservations.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action

or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

(i) conditions at the Site, previously unknown to the United States, are discovered after the Certification of Completion, or

(ii) information is received, in whole or in part, after the Certification of Completion,

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

D. For purposes of Paragraph B of this Section, the information previously received by and the conditions known to the United States shall include only that information and those conditions set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph C of this Section, the information previously received by and the conditions known to the United States shall include only that information and those conditions set forth in the Record of Decision, the administrative record supporting the Record of Decision, and any information received by the United States pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial

Action.

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

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

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

(3) criminal liability; and

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

F. Notwithstanding any other provision of this Consent Decree, the United States reserves the right to institute proceedings against the Settling Defendants in this action or in any new action seeking recovery of damages for injury to, destruction of, or loss of natural resources based on (1) conditions with respect to the Site, unknown at the date of lodging this Consent Decree; that result in further release of hazardous substances that contribute to injury to, destruction

of, or loss of natural resources, or (2) information received, in whole or in part, after the date of lodging of this Consent Decree, which together with any other relevant information, indicates that there is injury to, destruction of, or loss of natural resources of a type that was unknown, or of a magnitude greater than was known, to the United States at the date of lodging of this Consent Decree.

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

H. Additional Reservations As To Owner Settling Defendants. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel either or both of the Owner Settling Defendants, as the case may be, (1) to perform response actions relating to the Site (including the Work required herein) or (2) to reimburse the United States for costs of response (including the costs of the Work required herein) if, subsequent to the entry of this Consent Decree, information is received, in whole or in part, and this information together with any other relevant information indicates that such Owner Settling Defendant(s) had materially greater financial resources and/or assets than such Owner Settling Defendant(s) represented to the United States as of the entry of this Consent Decree. For purposes of this Paragraph H,

the information previously received by the United States shall include only that information set forth in (i) a letter dated July 12, 1991 to Harry Steinmetz of EPA from John C. Andrade, Esquire, counsel to Kowinsky Farms, Inc., in response to a request by EPA for information pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), (ii) a letter dated August 13, 1991 to Harry Steinmetz of EPA from John C. Andrade, Esquire, counsel to Alberta F. Schmidt, in response to a request by EPA for information pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), (iii) a letter dated August 26, 1991 to Harry Steinmetz of EPA from John C. Andrade, Esquire, counsel to Alberta F. Schmidt, in response to a request by EPA for information pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), (iv) a letter dated October 23, 1991 to Gwen Pospisil of EPA from John C. Andrade, Esquire, counsel to Alberta F. Schmidt and Kowinsky Farms, Inc., in response to a request for information pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and (v) any further responses to EPA's requests for information pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), submitted by the Owner Settling Defendants prior to the entry of this Consent Decree.

I. Subject to the satisfaction of any proceeding instituted or order issued by the United States in accordance with Paragraph H, above, of this Section, the Non-Owner Settling Defendants reserve their rights to seek contribution from the Owner Settling Defendants under the same circumstances described in Paragraph H,

above, of this Section.

XXIII. COVENANTS BY SETTLING DEFENDANTS

Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through Sections 106(b)(2), 111 or 112 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, or 9612, or any other provision of law, any claim against any department, agency or instrumentality of the United States related to the Site, or any claims arising out of response activities at the Site. However, the Settling Defendants reserve, and this Consent Decree is without prejudice to, actions against the United States based on negligent actions taken directly by the United States (not including oversight or approval of the Settling Defendants' plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

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

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

C. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the

complaint on them. Settling Defendants acknowledge that the United States has no obligation to defend them in any suit or claim for contribution.

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

XXV. ACCESS TO INFORMATION

A. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA, for purposes of investigation, information

gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work or the implementation of this Consent Decree.

B. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, the public may be given access to such documents or information without further notice to Settling Defendants. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal courts in actions involving the United States. If the Settling Defendants assert such a privilege, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each

addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the nature and basis of the privilege asserted by Settling Defendants. However, no documents, records or information created, generated or collected pursuant to the terms of the Consent Decree shall be withheld on the grounds that they are privileged.

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

XXVI. RETENTION OF RECORDS

A. Until 6 years after the Non-Owner Settling Defendants' receipt of EPA's notification pursuant to Paragraph B.2 of Section XV (Certification of Completion), each Non-Owner Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person, including any Settling Defendant, for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 6 years after the Non-Owner Settling Defendants' receipt of EPA's notification pursuant to Paragraph B.2 of Section XV (Certification of Completion), Non-Owner Settling Defendants shall also instruct their contractors and agents to preserve all

documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

B. Upon conclusion of this document retention period, Non-Owner Settling Defendants shall notify EPA by certified mail, return receipt requested, 90 and 30 days prior to the destruction of any such records, documents or information, and, upon request of EPA, Non-Owner Settling Defendants shall deliver all such documents, records and information to EPA. EPA may request one additional 90-day period to make arrangements to take custody of the documents, records, and information. If EPA has not taken possession of the documents, records, and information at the end of the initial 90-day period (or the second 90-day period if requested by EPA), the Non-Owner Settling Defendants may dispose of the documents, records, and information. Non-Owner Settling Defendants shall specify in the notifications required by this Paragraph the date on which the documents will be destroyed, unless Non-Owner Settling Defendants receive a written response from EPA.

XXVII. NOTICES AND SUBMISSIONS

A. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals specified in the particular Section of this Consent Decree at the addresses specified below, unless those individuals or their successors give notice of a

change to the other parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Consent Decree with respect to the United States, EPA, and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DOJ # 90-11-2-658

and

Chief, CERCLA Removal and Pennsylvania Remedial Branch (3RC20)
Attn: Coker's Sanitation Service Landfills Site
Office of Regional Counsel
United States Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

As to EPA:

Robert Guarni (3HW25)
EPA Remedial Project Manager
Superfund Remedial Branch
Attn: Coker's Sanitation Service Landfills Site
United States Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

As to the Settling Defendants:

Dr. Albert F. Vickers
 Director
 Environmental Services
 Reichhold Chemicals, Inc.
 P.O. Box 13582
 Research Triangle Park, NC 27709

Address for overnight mail:
 800 Capitola Drive
 Durham, NC 27713

Carl Volkert
 Nabisco Brands, Inc.
 P.O. Box 1944
 200 DeForest Avenue
 East Hanover, NJ 07936-1944

Paul Weiner
 Rapid-American Corporation
 c/o McCrory Corp.
 12th Floor
 667 Madison Ave.
 New York, NY 10021

Paul Weiner
 McCrory Parent Corp.
 c/o McCrory Corp.
 12th Floor
 667 Madison Ave.
 New York, NY 10021

Richard Sobel
 Clean Sites, Inc.
 1199 North Fairfax St. - Suite 400
 Alexandria, VA 22314

Joseph S. Kowinsky, Jr.
 President, Kowinsky Farms, Inc.
 R.D. 5
 Box 131-K
 Dover, Delaware 19901

Alberta F. Schmidt
 R.D. 5
 Box 148
 Kent County
 Dover, Delaware 19901

As to the State:

Jane F. Biggs
State of Delaware
Division of Air and Waste Management
Department of Natural Resources and
Environmental Control
715 Grantham Lane
New Castle, DE 19720

XXVIII. EFFECTIVE AND TERMINATION DATES

A. The effective date of this Consent Decree shall be one (1) day following the date that EPA or the Department of Justice gives written notice to the Settling Defendants by overnight mail or telefax of the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

B. After EPA has notified the Non-Owner Settling Defendants pursuant to Paragraph B.2 of Section XV (Certification of Completion) of this Consent Decree or after EPA determines that it does not need to conduct, in accordance with Section VIII (U.S. EPA Periodic Review) of this Consent Decree, any additional 5 year reviews pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), whichever is later, and after the United States has been reimbursed by the Non-Owner Settling Defendants for all costs under Sections XVI (Emergency Response) and XVII (Reimbursement of Response Costs) of this Consent Decree, the Settling Defendants may request that the United States petition the Court to terminate this Consent Decree. If the United States agrees that this Consent Decree should be terminated, then the United States and the Settling Defendants may jointly petition

the Court for termination of this Consent Decree. If the United States rejects the Settling Defendants' request to terminate this Consent Decree, it shall explain its reasons in writing to the Settling Defendants, and the dispute resolution procedures of Section XX of this Consent Decree shall apply. Termination shall not affect the provisions of Section X (Access), Section XX (Dispute Resolution), Section XXII (Covenants Not To Sue By Plaintiff), Section XXIII (Covenants By Settling Defendants), Section XXIV (Effect Of Settlement; Contribution Protection), Section XXVI (Retention of Records), Section XXVIII (Effective and Termination Dates), and Section XXIX (Retention of Jurisdiction) of this Consent Decree.

XXIX. RETENTION OF JURISDICTION

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

XXX. APPENDICES

The following appendices are attached to and incorporated

into this Consent Decree:

"Appendix A" is the ROD.

"Appendix B" is the map of the Site.

"Appendix C" is the list of Performance Standards identified as of the effective date of this Consent Decree and the description of the Selected Remedy.

"Appendix D" sets forth monitoring required by the Federal Trustees which the Non-Owner Settling Defendants have agreed to undertake in addition to the monitoring required by the ROD.

XXXI. COMMUNITY RELATIONS

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

XXXII. MODIFICATION

A. Schedules for completion of the Work specified in this Consent Decree or incorporated by reference may be modified by agreement of the Parties. All such modifications shall be made in writing and a copy shall be filed with the Court.

B. No material modifications shall be made to the Remedial Design Work Plan or the Remedial Action Work Plan, and no

modifications shall be made to provisions of this Consent Decree other than the Remedial Design Work Plan and the Remedial Action Work Plan as described below in Paragraph C of this Section, without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

C. Modifications to the Remedial Design Work Plan and the Remedial Action Work Plan that do not materially alter the requirements of those documents may be made by written agreement between the EPA Remedial Project Manager, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendants.

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

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

A. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the

entry of this Consent Decree without further notice.

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

XXXIV. SIGNATORIES/SERVICE

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

B. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or challenge any provision of this Consent Decree.

C. Each Non-Owner Settling Defendant and Kowinsky Farms, Inc. 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. Non-Owner Settling Defendants and Kowinsky Farms, Inc. hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure, including, but not limited to, waiver of service of a

summons, and any applicable local rules of this Court. Alberta F. Schmidt agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure, including, but not limited to, waiver of service of a summons, and any applicable local rules of this Court.

SO ORDERED THIS 8th DAY OF April, 1992.

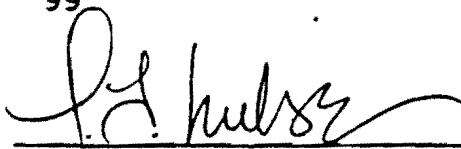
Joseph D. Faerman
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Kowinsky Farms, Inc. et al., relating to the Coker's Sanitation Service Landfills Superfund Site.

FOR THE UNITED STATES OF AMERICA


Date: 12-28-91

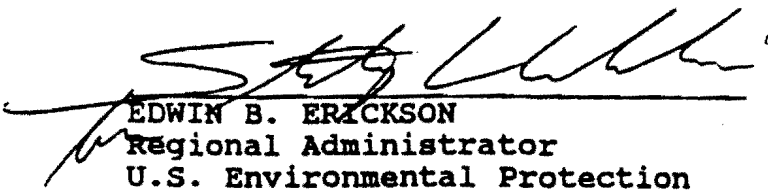
Barry W. Barker
~~Barry W. Barker~~ Roger Clegg
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530



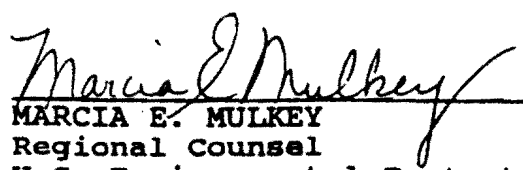
LESLIE A. HULSE
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1543

WILLIAM C. CARPENTER, JR.
United States Attorney

By: 
Patricia C. Hannigan
Assistant United States Attorney
District of Delaware
U.S. Department of Justice
J. Caleb Boggs Federal Building
844 King Street
Wilmington, DE 19801



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



MARCIA E. MULKEY
Regional Counsel
U.S. Environmental Protection
Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

Gwen E. Pospisil

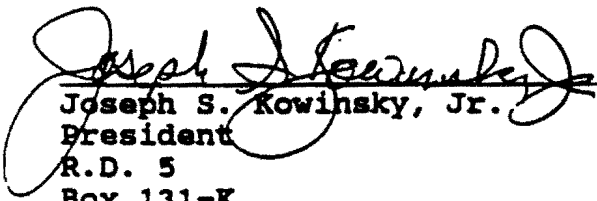
GWEN E. POSPISIL
Assistant Regional Counsel
U.S. Environmental Protection
Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107
(215) 597-8543

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Kowinsky Farms, Inc. et al., relating to the Coker's Sanitation Service Landfills Superfund Site.

FOR KOWINSKY FARMS, INC.

Date:

10/31/81


Joseph S. Kowinsky, Jr.
President
R.D. 5
Box 131-K
Dover, Delaware 19901

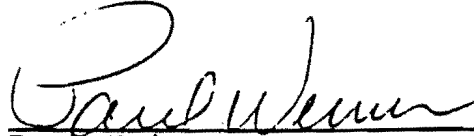
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Parkowski, Noble & Guerke
Address: 116 West Water Street
P.O. Box 598
Dover, Delaware 19901

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Kowinsky Farms, Inc. et al., relating to the Coker's Sanitation Service Landfills Superfund Site.

FOR MCCRORY PARENT CORP.

Date: October 30, 1991



Paul Weiner
Vice President
McCrory Parent Corp.
c/o McCrory Corp.
12th Floor
667 Madison Ave.
New York, NY 10021

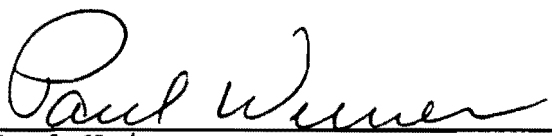
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: United Corporate Services, Inc.
Address: 15 East North Street
Address: Dover, DE 19901

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Kowinsky Farms, Inc. et al., relating to the Coker's Sanitation Service Landfills Superfund Site.

FOR RAPID-AMERICAN CORPORATION

Date: October 30, 1991


Paul Weiner
Vice President
Rapid-American Corp.
c/o McCrory Corp.
12th Floor
667 Madison Ave.
New York, NY 10021

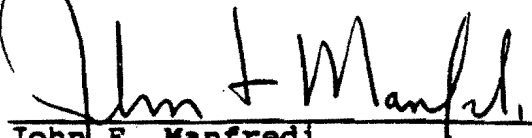
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Prentice-Hall Corporation Systems, Inc.
Address: 32 Loockerman Square
Address: Dover, DE 19011

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Kowinsky Farms, Inc. et al., relating to the Coker's Sanitation Service Landfills Superfund Site.

FOR NABISCO BRANDS, INC. *MD*

Date: 10/30/91


John F. Manfredi
Senior Vice President
Nabisco Brands, Inc.
7 Campus Drive
Parsippany, NJ 07054-0311

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

Name: United States Corporation Company
Title: Registered Agent
Address: 150 West State Street
Trenton, NJ 08608

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Kowinsky Farms, Inc. et al., relating to the Coker's Sanitation Service Landfills Superfund Site.

FOR REICHOLD CHEMICALS, INC.

Date: 10/31/91



Dr. Albert F. Vickers
Director, Environmental Services
Reichhold Chemicals, Inc.
P.O. Box 13582
Research Triangle Park, NC 27709

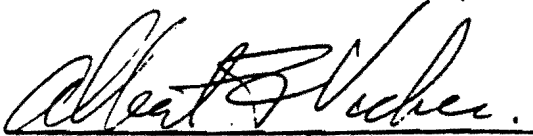
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Dr. Albert F. Vickers
Title: Director, Environmental Services
Address: Reichhold Chemicals, Inc.
P.O. Box 13582
Research Triangle Park, NC 27709

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Kowinsky Farms, Inc. et al., relating to the Coker's Sanitation Service Landfills Superfund Site.

FOR REICHHOLD CHEMICALS, INC.

Date: 10/31/91



Dr. Albert F. Vickers
Director, Environmental Services
Reichhold Chemicals, Inc.
P.O. Box 13582
Research Triangle Park, NC 27709

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

Name: Dr. Albert F. Vickers
Title: Director, Environmental Services
Address: Reichhold Chemicals, Inc.
P.O. Box 13582
Research Triangle Park, NC 27709

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Kowinsky Farms, Inc. et al., relating to the Coker's Sanitation Service Landfills Superfund Site.

Date: Oct 31, 1991

Alberta F. Schmidt

ALBERTA F. SCHMIDT

R.D. 5

Box 148

Kent County

Dover, Delaware 19901