IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

UNITED STATES OF AMERICA and STATE OF INDIANA, Plaintiffs, v. ACTIVE PRODUCTS, et al., Defendants.	)	CIVIL ACTION NOS. F91-00247 F91-00281

ORDER:
ENTRY OF PREVIOUSLY LODGED CONSENT DECREE

Whereas the Court has reviewed the consent decree lodged with the Court on or about October 31, 1991,

Whereas the United States has filed, and the Court has considered, a motion and memorandum seeking entry of the decree, and the correction of specified accounting errors in the decree's payment schedules,

Whereas no party has opposed entry of the decree or the corrections specified by the United States,

Whereas the Court concludes that the settlement embodied in the decree is fair, reasonable, in the public interest, and faithful to the objectives of applicable law,

The Court hereby grants the United States' motion for entry. Entry of this Order constitutes the Court's execution of the decree as it was lodged with the Court, and entry of this Order

also makes the requested accounting corrections (see Exhibit A to this Order) part of the decree.

SO ORDERED this 20 day of July 1992.

United States District Judge
Northern District of Indiana

EXHIBIT A

Corrections and Updates of Amounts Owed

Under Consent Decree

Corrections and Updates that Decrease Amount Owed:

Tier I, Consent Decree Appendix 7 --

Minnesota Mining and Manufacturing (3M): The total cost share should be $19,448.44 (a decrease of $400.00 reflecting updating of accounts); and

Northern Indiana Manufacturing, Inc.: The total cost share should be $39,916.99, rather than $45,388.98 (higher number was a typographical error).

Tier II, Consent Decree Appendix 8 --

Cooper Industries (Joy/Dotco): The total cost share should be $49,922.18, rather than $69,675.38 (arithmetic error);

Bristol Corporation: The total cost share should be $66,608.75, rather than $94,865.38 (arithmetic error and bookkeeping update); and

United States, with respect to the U.S. Air Force (including the Air Nat'l. Guard): The total cost share should be $469,829.14, rather than $668,474.41 (arithmetic error).

Corrections and Updates that Increase Amount Owed:

Tier I, Consent Decree Appendix 7 --

L.E. Johnson Products: The total cost share should be $5,478, rather than $3,353 (incorrectly credited with prior payment of RI/FS costs totalling $2,125);

Syndicate Sales: The total cost share should be $3,877.74, rather than $3,627.43 (typographical error that appeared only in the copy of the Decree lodged with the Court).

Certificate of Service

I certify that on or before July 10, 1992, the persons listed below were served with copies of the foregoing form orders by U.S. mail, first-class and postage pre-paid:

Attorney General
State of Indiana
Rm. 219 State House
Indianapolis, IN 42604
Attn: Wayne Reclamation and Recycling, Inc., Coordinator

Commissioner
IDEM
105 S. Meridian
Indianapolis, IN 42606
Attn: Wayne Reclamation and Recycling, Inc., Project Manager, Superfund Section, Office of Environmental Response

William Hall, Esq.
Breed, Abbott & Morgan
1818 N Street, NW
Washington, D.C. 20036

Christopher Dunsky, Esq.
Honigman, Miller, Schwartz & Cohn
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Detroit, MI 48226

Neal Weinfield, Esq.
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Timothy J. Bloom
Bloom & Bloom
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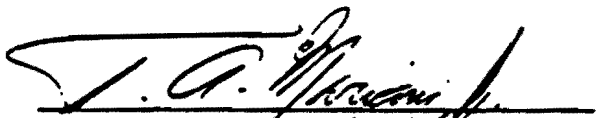
Columbia City, IN 46725



Thomas A. Mariani, Jr.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,
STATE OF INDIANA

Plaintiffs,

v.

ACTIVE PRODUCTS, et al.,

Defendants.

CIVIL ACTION NO.

F91-00247
F91-281

CONSENT DECREE

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CONSENT DECREE

WHEREAS, The United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), and the Secretary of the Department of the Interior and the State of Indiana, on behalf of the Indiana Department of Environmental Management, filed concurrently with this Consent Decree a Complaint in this matter against defendant signatories to this Consent Decree ("De Minimis Settlors and RD/RA Settlors") pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. §§ 9606, 9607, for the recovery of past costs incurred by the U.S. EPA and the State and for the conduct of Remedial Design and Remedial Action (RD/RA) in response to an alleged release or threatened release of hazardous substances at or from Wayne Reclamation and Recycling, Inc., in Whitley County, Indiana (the "Facility" as specifically defined in Paragraph 4 of this Consent Decree);

U.S. EPA, pursuant to Section 105 of CERCLA, 42 U.S.C. §9605, placed the Facility on the National Priorities List, which is set forth at 40 CFR Part 300, Appendix B, by publication in the Federal Register on December 30, 1982, 47 Fed. Reg. 58476-58485 (December 30, 1982);

The alleged release of hazardous substances into the environment at or from the Facility may have caused property damage at the Facility;

Certain De Minimis Settlors and RD/RA Settlors, under the direction of U.S. EPA, have already initiated two removal actions at the Facility. One removal action was conducted under an Administrative Order by Consent entered into in 1986 which included excavation and off-site disposal of approximately 7,500 tons of contaminated soil and 215 drums, and other actions. A second removal action was conducted under the 1988 Unilateral Administrative Order, performed by four non-de minimis parties, which included excavation and off-site disposal of approximately 5,400 tons of contaminated soil, 125 drums, and the contents of 23 tanks, as well as other activities;

In response to an alleged release or a substantial threat of a release of a hazardous substance at or from the Facility, certain De Minimis Settlors and RD/RA Settlors in August 1987 commenced a Remedial Investigation and Feasibility Study ("RI/FS") pursuant to 40 CFR 300.68 for the Facility;

Certain De Minimis Settlors and RD/RA Settlors completed a Remedial Investigation ("RI") Report on June 6, 1989, and completed a Feasibility Study ("FS") Report on January 17, 1990;

U.S. EPA proposed a plan for remedial action at the Facility;

On or about January 22, 1990, U.S. EPA, pursuant to Section 117 of CERCLA, 42 U.S.C. §9617, published notice of the completion of the RI/FS and of the proposed plan for remedial action, in a major local newspaper of general circulation and provided opportunity for public comment to be submitted in writing to U.S. EPA by February 21, 1990, or orally at a public meeting held in

Columbia City, Indiana on February 7, 1990;

U.S. EPA, pursuant to Section 117 of CERCLA, 42 U.S.C. §9617, has kept a transcript of the public meeting and has made this transcript available to the public as part of the administrative record located at U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois and at

City Hall
112 S. Chauncey
Columbia City, Indiana

Peabody Library
203 N. Main
Columbia City, Indiana

By letter dated June 5, 1990, U.S. EPA, pursuant to Section 122 of CERCLA, 42 U.S.C. §9622, notified certain parties that the U.S. EPA determined each party to be a potentially responsible party ("PRP") regarding the proposed remedial action at the Facility;

In accordance with Section 121(f)(1)(F) of CERCLA, 42 U.S.C. §9621(f)(1)(F), by letter dated June 5, 1990, U.S. EPA notified the State of Indiana of negotiations with PRPs regarding the scope and implementation of the remedial design and remedial action for the Facility, and U.S. EPA has provided the State with an opportunity to participate in such negotiations and be a party to any settlement;

Pursuant to Section 122(j) of CERCLA, 42 U.S.C. §9622(j), by letter dated June 5, 1990, U.S. EPA notified the Federal natural resource trustee of negotiations with PRPs on the subject of addressing the release or threatened release of hazardous

substances at the Facility;

Certain persons have provided comments on U.S. EPA's proposed plan for remedial action, and to such comments U.S. EPA provided a summary of responses, all of which have been included in the administrative record referred to above;

Considering the proposed plan for remedial action and the public comments received, U.S. EPA has reached a decision on the selection of a final remedial action plan, which is set forth in a document called a Record of Decision ("ROD") signed by the Regional Administrator on March 30, 1990 (attached as Appendix 1 hereto), to which the State has given its concurrence, and which includes a discussion of U.S. EPA's reasons for the selection of the final remedial plan and for any significant changes from the proposed remedial action plan;

U.S. EPA, pursuant to Section 117(b) of CERCLA, 42 U.S.C. §6917(b), has provided public notice of adoption of the final remedial action plan set forth in the ROD, including notice of the ROD's availability to the public for review in the same locations as the administrative record referred to above;

Pursuant to Section 117(d) of CERCLA, 42 U.S.C. §9617(d), the notice has been published in a major local newspaper of general circulation, and the notice includes an explanation of any significant changes from the proposed remedial action plan and the reasons for such changes;

Pursuant to Section 121(d)(1) of CERCLA, 42 U.S.C. §6921(d)(1), U.S. EPA, the State, the De Minimis Settlors, the

Federal Agencies and the RD/RA Settlors ("the Parties") believe that the remedial action plan adopted by U.S. EPA and set forth in the ROD will attain a degree of cleanup of hazardous substances, pollutants and contaminants released into the environment and of control of further release which at a minimum assures protection of human health and the environment at the Facility;

The Parties believe the remedial action plan adopted by U.S. EPA in the ROD will provide a level or standard of control for such hazardous substances, pollutants, or contaminants which at least attains legally applicable or relevant and appropriate standards, requirements, criteria, or limitations under Federal environmental law or State environmental or facility siting law in accordance with Section 121(d)(2) of CERCLA, 42 U.S.C. §9621(d)(2), and that the remedial action plan is in accordance with Section 121 of CERCLA, 42 U.S.C. §9621, and is necessary and consistent with the National Contingency Plan ("NCP"), 40 CFR Part 300;

The RD/RA Settlors agree to implement the final remedial action plan adopted by U.S. EPA in the ROD as set forth in Appendix 1 to this Consent Decree and incorporated by reference into this Decree, and U.S. EPA, in consultation with the State, has determined that the work required under the Consent Decree will be done properly by the RD/RA Settlors and that the RD/RA Settlors are qualified to implement the remedial action plan contained in the ROD; and

Certain De Minimis Settlors and RD/RA Settlors have incurred response costs in conducting a removal action, begun in 1986

pursuant to Administrative Order VW-86-C-014, an RI/FS, begun in 1987 pursuant to Administrative Order VW-87-C-018, and in complying with Unilateral Administrative Order VW-88-C-001, issued in 1988 (collectively "Private Party Response Costs"). Those De Minimis Settlors owing Private Party Response Costs desire, for ease of administration, and without admitting any liability or fact or the validity of any claim for Private Party Response Costs, to resolve any and all liabilities for such costs.

The De Minimis Settlors and the Federal Agencies agree to pay specified amounts of money in settlement to the Wayne Reclamation and Recycling, Inc. De Minimis Trust Funds, to be used to pay for performance and completion of the remedial work performed by the RD/RA Settlors under this Decree, as well as to reimburse the United States and the State for certain past response costs and future oversight costs and for alleged damage to natural resources.

Based upon the Administrative Record, U.S. EPA has determined that the requirements of Section 122 (g) of CERCLA, 42 U.S.C. §9622(g), are satisfied with respect to the De Minimis settlement as follows:

1. The settlement with the De Minimis Settlors embodied in this Consent Decree is practicable and in the public interest. A final settlement is being reached with large numbers of the De Minimis Settlors in this case which allows them to settle their potential liability for response costs which have been or may be incurred at the Facility, thereby avoiding difficult, prolonged and complicated litigation among U.S. EPA, the State, the De Minimis

Settlors, and the RD/RA Settlors. This de minimis settlement may simplify subsequent negotiations and/or litigation concerning the Facility by eliminating a substantial number of parties from further involvement in the case, while raising revenues to be applied to U.S. EPA's and the State's response costs associated with this Facility as well as performance of remedial work at the Facility.

2. This settlement involves only a minor portion of the response costs at the Facility with respect to each De Minimis Settlor herein.

3. Information currently known to U.S. EPA and the State indicates that the amount of hazardous substances contributed to the Facility by each De Minimis Settlor herein is minimal in comparison to the amount of hazardous substances contributed to the Facility. The volume of the waste contributed to the Facility by each De Minimis Settlor, including the U.S. Postal Service, herein was estimated by U.S. EPA, as was the contribution of the U.S. Air Force and is listed in Appendices 7 and 8.

4. Information currently known to U.S. EPA and the State indicates that the toxic or other hazardous effects of the hazardous substances contributed to the Facility by each De Minimis Settlor herein are minimal in comparison to other hazardous substances at the Facility. Based upon U.S. EPA's Transactional Database, U.S. EPA knows of no De Minimis Settlor herein that contributed hazardous substances having disproportionately hazardous effects.

By agreement of all the Parties, and in consideration of the release and waiver of the right to assert claims against the United States and the State, the Federal Agencies are participating in this settlement as de minimis settlors.

By executing this Decree, the De Minimis Settlors, the Federal Agencies and the RD/RA Settlors do not admit liability or any statement of fact contained herein, and retain their rights to controvert in any subsequent litigation, other than proceedings to implement or enforce this Decree, the validity of the assessments of waste volume contained in Appendices 7 and 8, attached to this Decree.

The RD/RA Settlors agree to pay a specified amount in settlement of a natural resource damages claim to the Secretary of the United States Department of the Interior .

The De Minimis Settlors and the Federal Agencies agree to pay a specified amount of money in settlement of a natural resources damage claim to the Wayne Reclamation and Recycling, Inc. De Minimis Trust Funds for disbursement by the RD/RA Settlors to the Secretary of the United States Department of Interior.

The RD/RA Settlors agree to authorize disbursements of money from the Wayne Reclamation and Recycling, Inc. De Minimis Trust Funds for only those purposes set forth in this Consent Decree.

The Parties agree that this settlement is in the public interest, is fair, reasonable, and furthers the goals of CERCLA;

The Parties recognize, and intend to further hereby, the public interest in the expedition of the cleanup of the Facility

and in avoiding prolonged and complicated litigation between the Parties;

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

I. PURPOSE OF DECREE

1. The purpose of this Consent Decree is to provide for implementation by the RD/RA Settlors of the final remedial design and remedial action for the Facility selected by U.S. EPA, as set forth in the Record of Decision attached as Appendix 1, to resolve the alleged liabilities of the De Minimis Settlors and Federal Agencies by payment of specified amounts of money in settlement to the Wayne Reclamation and Recycling, Inc. De Minimis Trust Funds, to provide for payment for damage to natural resources, to provide payment of certain response costs incurred and to be incurred by the United States and the State for the Facility, and to provide for payment to certain private parties who have incurred Private Party Response costs at the Facility.

II. JURISDICTION

2. This Court has jurisdiction over the subject matter herein and over the Parties consenting hereto pursuant to 28 U.S.C. §§1331(a) and 1345, and 42 U.S.C. §§9613(b) and 9622(d)(1)(A). Solely for the purposes of entering into and enforcing this Consent Decree, the De Minimis Settlors and the RD/RA Settlors hereby waive service of the summons and complaint in this action, and also waive service of any notices of lodging and motions to enter or enforce this Decree, except that service shall be made by U.S. mail with postage pre-paid upon the representatives of the De Minimis

Settlors and the RD/RA Settlors, identified in para. 91 hereof.

III. PARTIES BOUND

3. This Consent Decree applies to and is binding upon the undersigned Parties and their successors and assigns. The undersigned representative of each party to this Consent Decree certifies that he or she is fully authorized by the party or parties whom she or he represents to enter into the terms and conditions of the Consent Decree and to execute and legally bind that party to it. The RD/RA Settlors shall provide a copy of this Consent Decree to the contractor(s) hired to perform the work required by this Consent Decree and shall require the contractor(s) to provide written notice of the Decree to any subcontractor retained to perform any part of the Work. All Appendices are incorporated into this Consent Decree by reference as if fully set forth herein.

IV. DEFINITIONS

4. Whenever the following terms are used in this Consent Decree and the Appendices attached hereto, the following definitions shall apply:

"Cleanup and Performance Standards" means the requirements respecting the degree of cleanup of groundwater, surface water, soil, air or other environmental media that must be achieved by the remedial action, as set forth in the ROD, para. 12 of this Decree, and the SOW.

"Consent Decree" means this Decree and all appendices hereto. In the event of conflict between this Decree and any appendix, the

Decree shall control.

"Contractor" means the company or companies retained by or on behalf of the RD/RA Settlors to undertake and complete the Work required by this Consent Decree. Each contractor and subcontractor shall be qualified to do those portions of the Work for which it is retained. Each contractor and subcontractor shall be deemed to be related by contract to each RD/RA Settlor within the meaning of 42 U.S.C. §9607(b).

"De Minimis Settlors" means "Tier 1 De Minimis Settlors" and "Tier 2 De Minimis Settlors" collectively. Tier 1 De Minimis Settlors, identified in Appendix 7, are (1) those parties contributing 0.2% or less of the waste volume at the Facility and (2) those parties contributing 0.2% to 1.0% of the waste volume at the Facility who have elected to participate as Tier 1 De Minimis Settlors. Tier 2 De Minimis Settlors, identified in Appendix 8, are those parties contributing 0.2% to 1.0% of the waste volume at the Facility who have elected to participate as Tier 2 De Minimis Settlors.

"Facility" shall have the meaning as defined in Section 101(9) of CERCLA, 42 U.S.C. §9601(9), and refers to the location where hazardous substances have been deposited, stored, disposed of, treated or placed by Wayne Reclamation and Recycling, Inc. and other entities, or otherwise come to be located, which facility is located within and near the city limits of Columbia City, Whitley County, State of Indiana, as generally shown on the map attached as Appendix 3.

"Federal Agencies" shall mean any department, agency, and/or instrumentality of the United States that may be potentially responsible at this Facility, including the United States Postal Service and the United States Air Force and its component commands and units, including the National Guard Bureau and all operations and activities of the Indiana Air National Guard in the performance of its federal mission, which have signed this Decree. For purposes of this Consent Decree, the Parties agree that all activities pertaining to the disposal of hazardous substances by the Indiana Air National Guard at the Facility were done in performance of the Indiana Air National Guard federal mission.

"Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

"National Contingency Plan" or "NCP" means the term used in Section 105 of CERCLA, 42 U.S.C. §9605, as amended, codified at 40 CFR Part 300.

"Oversight Costs" means any costs not inconsistent with the National Contingency Plan incurred by U.S. EPA or the State in monitoring the compliance of the RD/RA Settlors with this Consent Decree, including but not limited to payroll and other direct costs, indirect costs, including overhead costs, sampling and laboratory costs, travel, contractor costs and costs of review of the Work performed pursuant to this Consent Decree.

"Owner" refers to any person who owns any part of the Facility, including Wayne Reclamation and Recycling, Inc, City of Columbia City, Indiana, and Holmes & Company, Inc..

"Parties" means the United States of America, the State of Indiana, the De Minimis Settlors and the RD/RA Settlors.

"Private Party Response Costs" means those response costs incurred by certain De Minimis Settlors and RD/RA Settlors in conducting a removal action, begun in 1986 pursuant to Administrative Order VW-86-C-104, a RI/FS, begun in 1987 pursuant to Administrative Order VW-87-C-018, and in complying with Unilateral Administrative Order VW-88-C-001, issued in 1988.

"RD/RA Settlors" means those parties who have agreed in this Decree to perform the RD/RA at the Facility, as identified in Appendix 9.

"RD Work Plan" means the plan for the design of the remedial action for the Facility, as described in para. 13(a).

"Record of Decision" or "ROD" means the administrative Record of Decision issued by U.S. EPA setting forth the remedial action requirements for the Facility, attached as Appendix 1 hereto.

"Remedial Project Manager" or "RPM" means the person designated by U.S. EPA to coordinate, monitor or direct remedial activities at the Facility pursuant to 40 CFR 300.33 and Section XII hereof.

"Response Costs" means any costs of response as the term is defined in 42 U.S.C. §9601(25) not inconsistent with the National Contingency Plan incurred by the United States or the State pursuant to 42 U.S.C. §9601 et seq.

"Scope of Work" or "SOW" means the plan, set forth as Appendix 2 to this Decree, for implementation of the remedial design and

remedial action at the Facility pursuant to the Record of Decision, and any subsequent amendments of Appendix 2 in accordance with the provisions of this Decree.

"State" means the State of Indiana; "IDEM" means the State's Department of Environmental Management.

"Tier 1 De Minimis Settlors" means the de minimis parties identified in Appendix 7 who have signed this Decree; "Tier 2 De Minimis Settlors" means those de minimis parties identified in Appendix 8 who have signed this Decree.

"United States" means the United States of America, including its departments, agencies, and instrumentalities.

"U.S. EPA" means the United States Environmental Protection Agency.

"U.S. DOJ" means the United States Department of Justice.

"Wayne Reclamation and Recycling, Inc. De Minimis Trust Fund Agreements" refers to the three trusts to be established pursuant to this Decree and entitled "Tier 1 Wayne Reclamation and Recycling, Inc. Lump Sum De Minimis Trust Fund," "Tier 1 Wayne Reclamation and Recycling, Inc. Installment De Minimis Trust Fund," and "Tier 2 Wayne Reclamation and Recycling, Inc. De Minimis Trust Fund." The terms of the Wayne Reclamation and Recycling, Inc. De Minimis Trust Fund Agreements will not alter or effect in any way the rights and authorities of the United States under this Decree or any applicable law.

"Work" means all work and other activities required by the Consent Decree, including the design, construction and

implementation of the tasks described in the ROD, this Decree, the Scope of Work, the RD Work Plan, and any other plans or schedules submitted and approved by U.S. EPA, in consultation with the State, pursuant to this Decree to implement the SOW. The following are the major components of the Remedial Action:

- Installation of an upgraded security fence around the Facility;
- Deed restrictions to ensure protection of the municipal landfill cap and PAH-contaminated soil cover, if any;
- Construction, operation and maintenance of a Soil Vapor Extraction (SVE) system in the VOC-contaminated soil areas;
- Delineate and remediate lead-contaminated soils via soil washing or immobilization technologies, if those soils have the RCRA characteristic of toxicity;
- Monitoring of groundwater and air;
- Construction, operation and maintenance of a groundwater extraction and treatment/discharge system;
- Delineate the extent of the municipal landfill;
- Construction and maintenance of a RCRA Subtitle D compliant municipal landfill cap;
- Cover PAH-contaminated soil or consolidate under municipal landfill cap;
- Remove and treat contents of all above- and below ground tanks; delineate the extent of contamination due to spills or leaks associated with the tanks, and remediate such contamination;
- Remove and dispose of site debris, including but not limited to all tanks, tanker trucks, and the incinerator.

V. GENERAL PROVISIONS

5. Commitment of RD/RA Settlors to Perform RD/RA

a. The RD/RA Settlors agree jointly and severally to finance and perform the Work as defined in paragraph 4 hereof;

however, the RD/RA Settlors have agreed among themselves that Columbia City, as a RD/RA Settlor, shall be primarily responsible and liable for financing and performing certain components of the Work, including: (1) deed restrictions to ensure protection of the municipal landfill cap and PAH-contaminated soil cover, if any; (2) delineate the extent of the municipal landfill; (3) construction and maintenance of a RCRA Subtitle D compliant municipal landfill cap as described in para. II B of the SOW; (4) cover PAH-contaminated soil; (5) remediate the incinerator; (6) provide use of the City's POTW for up to 250,000 gallons per day of groundwater extraction without charge; and (7) any additional work or modification of the SOW required under Sections VII and VIII herein with respect to the above-described components. The Work for which Columbia City is primarily responsible is hereinafter referred to as "Columbia City Work." The RD/RA Settlors have agreed that Columbia City shall be primarily responsible and liable for complying with all obligations of the RD/RA Settlors required under this Decree with respect to Columbia City Work, including performing such Work in accordance with para. 5(c), selecting an architect/engineer and contractor under para. 10, providing quality assurance under para. 21, providing reports under Section XI, resolving disputes under Section XIV, retaining and making available information under Section XV, reimbursing response costs under para. 57, paying stipulated penalties under Section XX, providing indemnification under para. 85, responding to imminent and substantial endangerments under para. 93, and satisfying

obligations under para. 99; however, all RD/RA Settlors remain jointly and severally liable for the timely and proper performance of all work regardless of this RD/RA Settlor agreed-upon allocation of Work, and nothing in this paragraph affects the United States' right to enforce this Decree against any or all of the RD/RA Settlors.

b. If Columbia City fails to finance and perform the Columbia City Work or any part thereof, the other RD/RA Settlors shall do so. U.S. EPA shall provide notice of violation regarding all portions of the Work to representatives of both Columbia City and the other RD/RA Settlors, as identified in Section XXVIII.

c. The Work shall be completed in accordance with all requirements of this Decree, the ROD, the SOW, the RD Work Plan and all other plans or schedules submitted and approved by U.S. EPA, in consultation with the State, under this Decree. The procedures for submission and approval of plans are set forth in Section VI below.

d. The RD/RA Settlors shall use their best efforts to cooperate with the one another in implementing and conducting the RD/RA, including efforts to obtain all necessary permits, approvals, licenses, authorizations, and access.

6. Compliance with Applicable Laws; Permits and Approvals

a. All activities undertaken by the RD/RA Settlors pursuant to this Consent Decree shall be undertaken in accordance with the requirements of all applicable federal and state laws, regulations and permits, as required by CERCLA.

b. Pursuant to Section 121(e)(1) of CERCLA, no federal, state, or local permits are required for Work conducted entirely on the Facility as well as all suitable areas in very close proximity to the contamination necessary for implementation of the response action. The RD/RA Settlors shall obtain all permits or approvals necessary for Work at locations not covered by the preceding sentence under applicable federal, state or local laws and shall submit timely applications and requests for any such permits and approvals.

c. The standards and provisions of Section XIII hereof describing Force Majeure shall govern delays in obtaining permits required for the Work and also the denial of any such permits, provided that the RD/RA Settlors have made timely and good faith efforts to tender complete application for any such permits.

d. The RD/RA Settlors shall include in all contracts entered into for Work required under this Consent Decree, and shall require contractors to include in all subcontracts entered into for Work required under this Consent Decree, provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and regulations.

e. This Consent Decree is not a permit issued pursuant to any federal or state statute or regulation.

f. The United States and the State have determined that the Work required by this Consent Decree is consistent with the

authority of the United States and the State to establish remedial measures for the Facility.

7. Formal Approval Required. No informal advice, guidance, suggestions or comments by representatives of the United States or the State on plans, reports or other documents submitted by the RD/RA Settlors shall be construed as relieving them from obtaining any formal approvals, permits or other authorizations required by law or by this Decree. Further, no advice, guidance, suggestions or comments by such government representatives with respect to any submission by the RD/RA Settlors shall be construed so as to relieve them of their obligations under this Decree or to transfer any of their liability or obligations under this Decree to any other party or person, unless such advice, guidance, suggestions or comments are in writing and specify that they are intended to be formal approval, permit or other authorization by the United States by an individual designated to make such authorization.

8. Computation of Time. Unless otherwise provided, dates and time periods specified in or under this Decree are in calendar days. If the date for submission of any item or notification required by this Decree falls upon a weekend or state or federal holiday, the time period for submission of that item or notification is extended to the next working day following the weekend or holiday. Submission shall be deemed accomplished when the item is delivered or mailed to the required party or parties.

9. Conveyance of the Facility and Institutional Controls

a. Copy of Decree to be Recorded. Within thirty (30)

days of entry by the Court of this Decree, the RD/RA Settlors shall record a copy of this Decree with the Recorder's Office, Whitley County, State of Ihdiana -- attended by whatever is required to render the recording substantively and procedurally proper under Indiana law -- in the chain of title for any portion of the Facility owned by any of the RD/RA Settlors that is described in Appendix 6. Within thirty (30) days of entry by the Court of this Decree, the RD/RA Settlors shall use their best efforts to record a copy of this Decree with the Recorder's Office, Whitley County, State of Indiana -- attended by whatever is required to render the recording substantively and procedurally proper under Indiana law - in the chain of title for all other property comprising the Facility.

b. Alienation of Those Portions of the Facility Owned by a Owner Settling Defendant. Any portion of the Facility held by an Owner who signs this Decree (Owner Settling Defendant) may be freely alienated provided that at least sixty days prior to the date of such alienation, such Owner Settling Defendant notifies the United States and the State of such proposed alienation, the name of the grantee, and a description of the Owner Settling Defendant's obligations, if any, to be performed by such grantee. In the event of such alienation, all of the RD/RA Settlors' obligations pursuant to this Decree shall continue to be met by all the RD/RA Settlors and the grantee.

c. Notice. Any deed, title or other instrument of conveyance regarding the Facility shall contain a notice that the

Facility is the subject of this Consent Decree, setting forth the style of the case, case number, and Court having jurisdiction herein.

d. Institutional Controls. U.S. EPA, in consultation with the State, has determined that the following institutional controls are necessary to effect and protect the response action for the Facility and to protect the public health, welfare, and the environment:

Land Use Restrictions and Conditions. Upon the entry of this Consent Decree, the RD/RA Settlors shall restrict use of and access to that portion of the Facility property over which they have a right of access pursuant to the Order for Entry of Default Judgment in Borg-Warner Corporation, et al. v. Wayne Reclamation and Recycling, Inc., et al. (Civil Action No. F88-58, N.D. Ind.) dated March 8, 1990 (Appendix 4) and shall use their best efforts to restrict use of and access to remaining Facility property, and adjoining property that they own or control, in such a manner to ensure that:

A) There shall be no interference of any sort, by any person, with construction, operation, maintenance, monitoring, and efficacy of all components and structures and improvements resulting from or relating to the response actions implemented pursuant to this Consent Decree;

B) There shall be no operations on the Facility which extract, consume, or otherwise use the groundwater underlying the Facility property or adjoining property except as provided for in the course of carrying out the terms of this Consent Decree without prior written U.S. EPA approval and notification to the State;

C) There shall be no agricultural, recreational, residential, commercial, or industrial use of the Facility, including but not limited to any excavation, grading or other activity involving movement of soils at the Facility, and any construction or placement of any residences, buildings, or structures -- fixtures or otherwise -- other than for the purpose of implementing, monitoring, and maintaining the response action required by this Consent Decree without prior written U.S. EPA approval and notification to the State.

D) There shall be no construction, installation, or use of any buildings, wells, pipes, roads, ditches or any other structures -- fixtures or otherwise --on the Facility property that may interfere with

the construction, physical integrity, operation and maintenance, or efficacy of the Work undertaken pursuant to this Decree, including without limitation the Facility's: Security Fence, Municipal Landfill Cap, Soil Cover(s) related to PAH-contaminated Soil; Groundwater Extraction, Treatment, and Discharge System; Soil Vapor Extraction System; Air, Groundwater, and Surface Water Monitoring Systems; and Soil Immobilization or Washing Systems and Locations, unless such construction, installation or use is approved in advance, in writing, by U.S. EPA and the State has been notified.

Deed Restrictions. Within seventy (70) days of the entry of this Consent Decree, the RD/RA Settlors shall execute and record the deed restrictions attached as Appendix 5 hereto, consisting of the land use restrictions and conditions set forth in immediately preceding Subparagraphs (A), (B), (C), and (D) of Paragraph 9.d -- attended by whatever is required to render the deed restriction substantively and procedurally proper under Indiana law -- with the Whitley County Recorder of Deeds, in the chain of title to the Facility property as described in Appendix 6 owned by any of the RD/RA Settlors. Within seventy (70) days of the

entry of this Decree, the RD/RA Settlors shall use their best efforts to execute and record the above-referenced deed restrictions -- attended by whatever is required to render the recording substantively and procedurally proper under Indiana law -- with the Whitley County Record of Deeds, in the chain of title to all other property comprising the Facility as described in Appendix 6. These deed restrictions shall run with the land and shall be binding upon any and all persons who acquire title or any legal interest in Facility property described in Appendix 6.

Duration of Deed Restrictions. Any person who owns or has a right of access pursuant to the Order identified in para. 9(d) to property subject to such deed restrictions may request U.S. EPA for a determination that one or more restrictions is no longer required in order to prevent interference with construction, operation, maintenance, monitoring, and efficacy of the response actions taken pursuant to this Decree, or to protect human health and the environment. U.S. EPA, in consultation with the State, shall determine whether the deed restriction can be extinguished. Such determination shall not be unreasonably withheld, delayed or denied. Upon such determination, the person who sought it shall submit to U.S. EPA for signature a form: i) appropriate to effect the approved extinguishment, and ii) recordable

under Indiana law.

VI. PERFORMANCE OF THE WORK BY THE RD/RA SETTLORS

10. Selection of Architect/Engineer and Contractor(s).

a. Architect/Engineer. All remedial design work to be performed by the RD/RA Settlors pursuant to this Consent Decree shall be under the direction and supervision of a qualified professional architect or engineer. As soon as possible after notification by the Remedial Project Manager, sent to the RD/RA Settlors after close of the public comment period on this Decree, that U.S. EPA intends to move for entry of the Decree, and at least twenty (20) days prior to the date upon which initiation of remedial design work is required under this Decree, the RD/RA Settlors shall notify U.S. EPA and the State, in writing, of the name, title, and qualifications of the architect or engineer proposed to perform the design work pursuant to this Consent Decree. Selection of any such architect or engineer is subject to approval by U.S. EPA in consultation with the State. Such approval shall not be unreasonably withheld, delayed or denied.

b. Contractor. All remedial action work to be performed by the RD/RA Settlors pursuant to this Consent Decree shall be under the direction and supervision of a qualified professional engineer or consultant. At least thirty (30) days prior to the date upon which initiation of remedial action work is required under this Decree, the RD/RA Settlors shall notify U.S. EPA and the State, in writing, of the name, title, and qualifications of the proposed engineer or consultant, and the names of principal contractors and

subcontractors proposed to be used in carrying out the Work to be performed pursuant to this Consent Decree. Selection of any such engineer, consultant or contractor and/or subcontractor shall be subject to approval by the U.S. EPA in consultation with the State. U.S. EPA's approval and the State's input shall not be unreasonably denied, withheld or delayed.

c. Disapproval of Architect/Engineer or Contractor.

If U.S. EPA disapproves of the initial or subsequent selection of an architect, engineer, consultant or contractor, the RD/RA Settlors shall submit a list of alternate architects, engineers, consultants or contractors to U.S. EPA and the State within 30 days of receipt of the notice of disapproval. Within 14 days from receipt of the list U.S. EPA, in consultation with the State, shall provide written notice of the names of the architects, engineers, consultants or contractors on the list of which it approves. The RD/RA Settlors may select any approved architect, engineer, consultant or contractor from the list and shall notify U.S. EPA and the State of the name of the person or entity selected within 21 days of receipt of the list. If U.S. EPA, in consultation with the State, does not approve or disapprove of any proposed architect, engineer, consultant or contractor or any proposed list of alternate architects, engineers, consultants or contractors within 14 days of receipt of the appropriate submission by the RD/RA Settlors and the delay prevents the RD/RA Settlors from meeting one or more deadlines in a plan approved by U.S. EPA pursuant to this Decree, the RD/RA Settlors may seek relief under

the provisions of Section XIII hereof.

d. Replacement of Architect/Engineer or Contractor. If at any time the RD/RA Settlors propose to change an architect, engineer, consultant or contractor previously approved by U.S. EPA, in consultation with the State, they shall give written notice to U.S. EPA and the State of the name, title and qualifications of the proposed new architect, engineer, consultant or contractor. Such architect, engineer, consultant or contractor shall not perform any Work until approval by U.S. EPA, in consultation with the State, has been given. Such U.S. EPA approval and the State's input shall not be unreasonably withheld, delayed or denied.

11. Scope of Work. Appendix 2 to this Consent Decree provides a Scope of Work ("SOW") for the completion of remedial design and remedial action at the Facility. This Scope of Work is incorporated into and made an enforceable part of this Consent Decree.

12. Cleanup and Performance Standards. The Work performed under this Consent Decree shall meet the Cleanup and Performance Standards set forth in the SOW as follows:

Clean-up and Performance Standard	SOW Section
Soil Remediation: VOC-contaminated soil	II(A)(1)
Soil Remediation: Metal-contaminated soil	II(A)(2)
Soil Remediation: PAH-contaminated soil	II(A)(3)
RCRA Subtitle D Cap: Municipal Landfill	II(B)
Groundwater Extraction and Treatment	II(C)
Above- and Below-ground Tanks	II(D)

Monitoring System: Ground/surface water II(E)(1)

Monitoring System: Air II(E)(2)

13. Work Plan.

a. Within 30 days of notification by the Remedial Project Manager, sent to the RD/RA Settlors after close of the public comment period on this Decree, that U.S. EPA intends to move for entry of this Consent Decree, the RD/RA Settlors shall commence remedial design work by submitting the RD Work Plan to U.S. EPA and the State, to include the following: (1) a sampling and analysis plan which includes quality assurance project plan(s) and field sampling plan(s); (2) a health and safety/contingency plan; (3) a plan for satisfaction of permitting requirements; (4) a schedule for submittal of the Remedial Design tasks, including: (a) a schedule for submittal of all phases of the design plans and specifications; (b) the groundwater monitoring plan; (c) the operations and maintenance (O&M) plan; and (d) the construction quality assurance project plan(s) (QAPP); and (e) the monitoring/O&M QAPP; and (5) a schedule for Remedial Action implementation, including: (a) a schedule for bidding of the construction contract(s); (b) a schedule for implementation of remedial action activities and (c) a schedule for construction inspections.

The RD/RA Settlors shall not be required to pay any Oversight Costs for U.S. EPA's or the State's review of their work prior to entry of the Decree under this paragraph, but following entry shall pay, upon reasonable notice, all such Oversight Costs

that accrued prior to entry pursuant to Section XIX hereof. U.S. EPA cost documentation shall be in the form of an itemized cost summary, formerly referred to as an Annotated SPUR Report, to be provided with the periodic oversight bill, and the State's cost documentation will be in the form of a Cost Summary.

b. All plans submitted shall be developed in conformance with the ROD, the SOW, U.S. EPA Superfund Remedial Design and Remedial Action Guidance and any additional guidance documents pertaining to plan development provided by U.S. EPA to the RD/RA Settlors that are in effect at the time of plan submission. If an applicable U.S. EPA guidance document is changed or is issued which requires modification of plans under development, U.S. EPA shall adjust deadlines of such plans as necessary to incorporate such guidance into the plan being developed.

c. All plans shall be subject to review, modification and approval by U.S. EPA, in consultation with the State, in accordance with the procedures set forth in para. 14 below.

d. All approved plans shall be deemed incorporated into and made an enforceable part of this Consent Decree. All Work shall be conducted in accordance with the National Contingency Plan, the U.S. EPA Superfund Remedial Design and Remedial Action Guidance, and the requirements of this Consent Decree, including the standards, specifications and schedule contained in the Work Plan.

14. Approval Procedures for Work Plans and Other Documents.

a. Upon review of each Work Plan or other document

required to be submitted and approved by U.S. EPA pursuant to this Decree, and after consultation with the State, the U.S. EPA Remedial Project Manager (the "RPM") shall notify the RD/RA Settlors, in writing, that a document is (1) approved, (2) disapproved, (3) modified by U.S. EPA to cure deficiencies, or (4) returned to the RD/RA Settlors for modification. An explanation shall be provided for any U.S. EPA disapproval or required modification.

b. Upon approval or modification of a submission by U.S. EPA, the RD/RA Settlors shall proceed to implement the Work required.

c. In the event of partial U.S. EPA disapproval or request for modification by the RD/RA Settlors, the RD/RA Settlors shall proceed to implement the Work in any approved portions of the submission upon request by U.S. EPA, and shall submit a revised document to U.S. EPA and the State curing the deficiencies within 30 calendar days of receipt of notice from U.S. EPA or such other time as may be agreed to by U.S. EPA, in consultation with the State, and the RD/RA Settlors.

d. The RD/RA Settlors may submit any disapproval, modification, or conditions of approval to which they object, for dispute resolution pursuant to Section XIV hereof. The provisions of Section XIV (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of Work and accrual and payment of any stipulated penalties during dispute resolution. Implementation of non-deficient portions of the submission shall

not relieve the RD/RA Settlors of any liability for stipulated penalties under Section XX for deficient portions which are not implemented.

VII. ADDITIONAL WORK AND MODIFICATION OF THE SOW

15. No Warranty. The provisions of the SOW attached as Appendix 2 reflect the Parties' best efforts at the time of execution of this Decree to define the technical work required to perform the remedial action described in the ROD. The Parties acknowledge and agree that approval by U.S. EPA of the SOW or the RD Work Plan does not constitute a warranty or representation of any kind that the SOW or RD Work Plan will achieve the Cleanup and Performance Standards, and shall not foreclose the United States or the State from seeking compliance with the applicable Cleanup and Performance Standards.

16. Modification of the Scope of Work. U.S. EPA, the State and the RD/RA Settlors recognize that modification of the SOW may be required at some point in the future, e.g., to provide for additional Work needed to meet the Cleanup and Performance Standards set forth in Section VI, para. 12 of this Decree. In seeking any modification of the SOW, U.S. EPA shall comply with all applicable provisions of the NCP. For example, before U.S. EPA or the State may seek a modification of the SOW which would fundamentally alter the basic features of the selected remedy in the ROD with respect to scope, performance, or cost (e.g., change the selected technology), U.S. EPA shall amend the ROD in accordance with the NCP and the procedural requirements thereunder

(including, for example, the requirements of 40 CFR 300.430, 300.435(c)(2)(ii), and 300.515(e), or as required by subsequent revisions of the NCP). In the event that U.S. EPA, the State or the RD/RA Settlors seek a modification to the SOW, the following procedures shall be followed to amend the SOW:

a. The party that determines that additional work or other modification of the SOW is necessary shall provide written notice of such determination to the other parties.

b. The other parties shall respond to such notice in writing within thirty (30) days of receipt or such other time as may be agreed to by the parties.

17. Modification by Agreement. If the U.S. EPA, the State and the RD/RA Settlors agree on the modifications to the SOW, the agreement shall be in writing, be made a part of this Consent Decree and submitted, along with the amended SOW, for approval of the Court.

18. Dispute Resolution. If the U.S. EPA, the State and the RD/RA Settlors do not agree on the proposed modifications under para. 16, they shall initiate dispute resolution pursuant to Section XIV of this Decree. The scope and standard of review set forth in para. 40 shall govern any judicial determination in such dispute.

VIII. U.S. EPA PERIODIC REVIEW TO ASSURE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT

19. To the extent required by Section 121(c) of CERCLA, 42

U.S.C. §9621(c), and any applicable regulations, U.S. EPA, in consultation with the State, shall review the remedial action at the Facility at least every five (5) years after the entry of this Consent Decree to assure that human health and the environment are being protected by the remedial action being implemented. The costs and expenses the RD/RA Settlors incur with respect to the review will be deemed to be costs of response which are necessary and consistent with the NCP. If upon such review, U.S. EPA determines that further response action is appropriate at the Facility in accordance with Section 104 or 106, then, consistent with Section VII and Section XXIV of this Consent Decree, the U.S. EPA, in consultation with the State, may take or require such action.

20. The RD/RA Settlors shall be provided with a reasonable opportunity to confer with U.S. EPA and the State on any response action proposed as a result of U.S. EPA's 5-year reviews and to submit written comments for the record. The final decision of U.S. EPA shall be subject to judicial review pursuant to the dispute resolution provisions in Section XIV hereof, if U.S. EPA, in consultation with the State, seeks to require the RD/RA Settlors to undertake such work.

IX. QUALITY ASSURANCE

21. The RD/RA Settlors shall use quality assurance, quality control, and chain of custody procedures in accordance with U.S. EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans" (QAM-005/80) and subsequent amendments to

such guidelines upon notification to the RD/RA Settlors of such amendments by U.S. EPA. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, the RD/RA Settlors shall submit Quality Assurance Project Plan(s) ("QAPP") to U.S. EPA and the State, consistent with the SOW and applicable guidelines, in accordance with paras. 13-14 hereof. Validated sampling data generated consistent with the QAPP(s) and reviewed and approved by EPA, in consultation with the State, shall be admissible as evidence, without objection, in any proceeding to enforce this Decree. Each laboratory utilized by the RD/RA Settlors in implementing this Consent Decree shall be subject to approval by U.S. EPA and the State. Such approval shall not be unreasonably withheld, denied or delayed. The RD/RA Settlors shall assure that U.S. EPA and State personnel or authorized representatives are allowed access to each such laboratory. In addition, the RD/RA Settlors shall have their laboratory analyze samples submitted by U.S. EPA or the State for quality assurance monitoring.

X. FACILITY ACCESS, SAMPLING, DOCUMENT AVAILABILITY

22. Access to Facility. As of the date of lodging of this Consent Decree, the United States and the State, and the RD/RA Settlors' contractors shall have access at all times to the Facility, subject to paragraph 23, and shall have access to any other property controlled by or available to the RD/RA Settlors to which access is necessary to effectuate the remedial design or

remedial action required pursuant this Decree. Access shall be allowed for the purposes of conducting activities pursuant to this Decree, including but not limited to:

a. Performing and monitoring the Work or any other activities taking place at the Facility;

b. Verifying any data or information submitted to U.S. EPA or the State;

c. Conducting investigations relating to contamination at or near the Facility;

d. Obtaining samples;

e. Assessing the need for, planning, or implementing additional response actions at or near the Facility;

f. Inspecting and copying records, operating logs, contracts or other documents maintained or generated by the RD/RA Settlors or their agents, consistent with this Decree and applicable law; or

g. Assessing the RD/RA Settlors' compliance with this Consent Decree.

23. Access to Other Property. To the extent that the Facility or other areas where Work is to be performed hereunder is presently owned or controlled by persons other than the RD/RA Settlors, the RD/RA Settlors shall use best efforts to secure from such persons access for the RD/RA Settlors' contractors, the United States, the State, and their authorized representatives, as necessary to effectuate this Consent Decree. If access is not obtained despite timely best efforts to obtain access, the RD/RA

Settlors shall promptly notify the United States and the State. The United States thereafter may assist the RD/RA Settlors in obtaining access, to the extent necessary to effectuate the remedial action for the Facility, using such means as it deems appropriate consistent with access guidance which is in effect at the time access is needed. The United States' costs in this effort, including attorney's fees and other expenses and any compensation that the United States may be required to pay to the property owner, shall be considered costs of response and shall be reimbursed by the RD/RA Settlors in accordance with Section XIX of this Decree (Reimbursement).

24. Access Authority Retained. Nothing herein shall restrict in any way the United States' or the State's access authorities and rights under CERCLA, RCRA, or any other applicable statute, regulation or permit.

25. Sampling Availability. The RD/RA Settlors shall make available to U.S. EPA and the State the results of all sampling and/or tests or other data generated by the RD/RA Settlors with respect to the implementation of this Consent Decree. If the RD/RA Settlors, U.S. EPA or the State take samples and/or perform tests, such parties shall notify such other parties in advance of any such sampling and/or tests to be conducted and data to be generated in connection with the Facility, and upon request, shall make available to the such other parties and the Tier 2 De Minimis Settlors the results of sampling and/or tests or other data generated.

26. Split Samples. Upon request a party taking samples shall allow other parties and/or their authorized representatives to take split or duplicate samples. The party taking samples shall give at least 14 days prior notice of sample collection activity to the other parties.

XI. REPORTING REQUIREMENTS

27. Monthly Progress Reports. The RD/RA Settlors shall prepare and provide to the United States and the State written monthly progress reports which satisfy the elements set forth in Section III, Task 4, para. A of the SOW. Such reports shall include a description of the actions which have been taken toward achieving compliance with this Consent Decree during the previous month, and attach copies of appropriate supporting documentation such as invoices, contract documents and photographs; as well as the status of contracts entered into pursuant to this Decree. Additionally, the monthly progress reports will include all results of sampling and tests and all other data received by the RD/RA Settlors during the course of the work which has passed quality assurance and quality control procedures, a description of all actions, data and plans which are scheduled for the next month, as well as all other information relating to the progress of construction. The RD/RA Settlors will also include in the monthly progress reports information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Scope of Work or RD Work Plan, and a description of efforts made to mitigate those delays or

anticipated delays. Progress reports are to be submitted to U.S. EPA and the State by the tenth day of every month following the effective date of this Consent Decree. Upon completion of the construction elements of the Work, the RD/RA Settlors may petition U.S. EPA and the State to submit semi-annual progress reports rather than monthly progress reports.

28. Other Reporting Requirements. The RD/RA Settlors shall submit reports, plans and data required by the SOW, the RD Work Plan or other approved plans in accordance with the schedules set forth in such plans.

29. Reports of Releases. Upon the occurrence of any event during performance of the Work which, pursuant to Section 103 of CERCLA, requires reporting to the National Response Center, the RD/RA Settlors shall promptly orally notify the U.S. EPA Remedial Project Manager ("RPM") or On-Scene Coordinator ("OSC"), and the State Project Coordinator, and as otherwise required by 327 Indiana Administrative Code 2-6-2, or in the event of the unavailability of the U.S. EPA RPM or OSC, the Emergency Response Section, Region V, United States Environmental Protection Agency at (312) 353-2318, in addition to the reporting required by Section 103. Within twenty (20) days of the onset of such an event, the RD/RA Settlors shall furnish to the United States and the State a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, the RD/RA Settlors shall submit a report setting forth all actions taken to respond thereto.

30. Annual Report. The RD/RA Settlors shall submit each year, within thirty (30) days of the anniversary of the entry of the Consent Decree, a report to the Court, U.S. EPA and the State, setting forth the status of response actions at the Facility, which shall include at a minimum a statement of major milestones accomplished in the preceding year, a statement of tasks remaining to be accomplished, and the schedule for implementation of the remaining Work.

XII. REMEDIAL PROJECT MANAGER/PROJECT COORDINATORS

31. Designation/Powers. U.S. EPA shall designate a Remedial Project Manager ("RPM") and/or an On Scene Coordinator ("OSC") and the State shall designate a Project Coordinator for the Facility, and they may designate a reasonable number of other representatives, including U.S. EPA and State employees, and federal and state contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. The RPM/OSC shall have the authority lawfully vested in an RPM/OSC by the National Contingency Plan, 40 CFR Part 300. In addition, the RPM/OSC shall have the authority to halt any work required by this Consent Decree and to take any necessary response action when conditions at the Facility may present an imminent and substantial endangerment to public health or welfare or the environment. The RD/RA Settlors shall also designate a Project Coordinator who shall have primary responsibility for implementation of the Work at the Facility.

32. Communications. To the maximum extent possible, except as specifically provided in the Consent Decree, communications between the RD/RA Settlors, the State and U.S. EPA concerning the implementation of the work under this Consent Decree shall be made between the Project Coordinators and the RPM/OSC.

33. Identification of Personnel. Within twenty (20) days of the effective date of this Consent Decree, the RD/RA Settlors, the State and U.S. EPA shall notify each other, in writing, of the name, address and telephone number of the designated Project Coordinator and an Alternate Project Coordinator, and the RPM/OSC and Alternate RPM/OSC. If the identity of any these persons changes, notice shall be given to the other parties at least five (5) business days before the changes become effective. Such five day prior notice requirement is waived in an emergency; however, the other parties must be notified within two (2) days of the change.

XIII. FORCE MAJEURE

34. Definition. "Force Majeure" for purposes of this Consent Decree is defined as any event arising from causes beyond the control of the RD/RA Settlors which delays or prevents the performance of any obligation under this Consent Decree notwithstanding the RD/RA Settlors' best efforts to avoid the delay. Increased costs or expenses or non-attainment of the Clean-Up and/or Performance Standards shall not by themselves constitute "force majeure" events.

35. Notice to RPM Required. When circumstances occur which

may delay the completion of any phase of the Work or delay access to the Facility or to any property on which any part of the Work is to be performed, whether or not caused by a "force majeure" event, the RD/RA Settlors shall promptly notify the RPM and the State Project Coordinator by telephone, or in the event of their unavailability, the Director of the Waste Management Division of U.S. EPA, Region V. Within twenty (20) days of the event which the RD/RA Settlors contend is responsible for the delay, the RD/RA Settlors shall supply to the United States and the State in writing the reason(s) for and anticipated duration of such delay, the measures taken and to be taken by the RD/RA Settlors to prevent or minimize the delay, and the timetable for implementation of such measures. Failure to give such oral notice and an unreasonable failure to provide a written explanation in a timely manner shall constitute a waiver of any claim of force majeure.

36. If U.S. EPA agrees that a delay is or was attributable to a "force majeure" event, U.S. EPA, the State and the RD/RA Settlors shall modify the SOW or RD/RA Work Plan to provide such additional time as may be necessary to allow the completion of the specific phase of Work and/or any succeeding phase of the Work affected by such delay.

37. If U.S. EPA does not agree with the RD/RA Settlors that the reason for the delay was a "force majeure" event, that the duration of the delay is or was warranted under the circumstances, or that the length of additional time requested by the RD/RA Settlors for completion of the delayed work is necessary, U.S. EPA

shall promptly notify the State and the RD/RA Settlors both orally and in writing. The RD/RA Settlors may initiate a formal dispute resolution proceeding under para. 39 below no later than 15 days after receipt of such notice. In such a proceeding, the RD/RA Settlors have the burden of proving that the event was a force majeure, that reasonable efforts were exercised to avoid and mitigate the effects of the delay, that the duration of the delay is or was warranted, that the additional time requested for completion of the Work involved is necessary to compensate for the delay, and that the notice provisions of para. 35 were complied with.

XIV. DISPUTE RESOLUTION

38. U.S. EPA, the State and the RD/RA Settlors shall attempt to resolve expeditiously any disagreements concerning the meaning, application or implementation of this Consent Decree. If U.S. EPA, the State or the RD/RA Settlors seek dispute resolution, the party seeking dispute resolution shall first provide the other parties with an "Informal Notice of Dispute" in writing and request an informal dispute resolution period, which shall not exceed thirty (30) days.

39. If the dispute is not resolved within the informal discussion period, U.S. EPA, the State or the RD/RA Settlors may initiate formal dispute resolution by giving a written "Formal Notice of Dispute" to the other parties no later than the fifteenth (15th) day following the conclusion of the informal dispute resolution period. A party may seek formal dispute resolution

prior to the expiration of the informal discussion period.

40. Formal dispute resolution for disputes pertaining to the selection or adequacy of remedial design or remedial action (including the approval, selection and adequacy of any plans which are required to be submitted for government approval under this Decree and the adequacy of Work performed) shall be conducted according to the following procedures:

a. Within twenty (20) days of the service of the Formal Notice of Dispute pursuant to the preceding paragraph, or such other time as may be agreed to by U.S. EPA, the State and the RD/RA Settlors, the party who gave the notice shall serve on the other parties a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position (hereinafter the "Statement of Position"), and shall provide copies of all supporting documentation on which such party relies.

b. Opposing parties shall serve their Statements of Position and copies of supporting documentation within twenty (20) days after receipt of the complaining party's Statement of Position or such other time as may be agreed to by the parties.

c. U.S. EPA shall maintain an administrative record of any dispute governed by this paragraph. The record shall include the Formal Notice of Dispute, the Statements of Position, all supporting documentation submitted by the parties, and any other material on which the U.S. EPA decisionmaker relies for the administrative decision provided for below. The record shall be

available for inspection and copying by all Parties. The RD/RA Settlors may supplement the record with any of the above listed material if U.S. EPA does not include it in the record. The record shall be closed no less than ten (10) days before the administrative decision is made, and U.S. EPA shall give the State and the RD/RA Settlors prior notice of the date on which the record will close.

d. Upon review of the administrative record U.S. EPA shall issue a final decision and order resolving the dispute.

e. Any decision and order of U.S. EPA pursuant to this paragraph shall be reviewable by this Court, provided that a Notice of Judicial Appeal is filed within twenty (20) days of receipt of U.S. EPA's decision and order; judicial review will be conducted on U.S. EPA's administrative record and U.S. EPA's decision shall be upheld unless it is demonstrated to be arbitrary and capricious or in violation of law.

41. Judicial dispute resolution for any issues not governed by the preceding paragraph may be initiated by petition to the Court and shall be governed by the Federal Rules of Civil Procedure. Except as specifically provided in other provisions of this Decree, e.g. Section XIII, this Decree does not establish procedures, burdens of proof, or standards of review for such dispute resolution proceedings.

42. The invocation of the procedures stated in this Section shall not extend or postpone the RD/RA Settlors' obligations under this Consent Decree with respect to the disputed issue unless and

until U.S. EPA agrees otherwise. U.S EPA's position on an issue in dispute shall control until such time as the Court orders otherwise in accordance with the provisions of this Section.

43. Any applicable Stipulated Penalties continue to accrue during dispute resolution, as provided in Section XX hereof. The RD/RA Settlors may seek forgiveness of stipulated penalties that accrue during dispute resolution by petition to U.S. EPA and/or the Court pursuant to para. 68. below.

44. Upon the conclusion of any formal or informal dispute resolution under this Section which has the effect of nullifying or altering any provision of the RD Work Plan or any other plan or document submitted and approved pursuant to this Decree, the RD/RA Settlors shall submit an amended plan, in accordance with the decision, to U.S. EPA and the State within fifteen (15) days of receipt of the final order or decision. Amendments of the SOW as a result of dispute resolution proceedings are governed by Section VII above. Amendments of a plan or other document as a result of dispute resolution shall not alter any dates for performance unless such dates have been specifically changed by the order or decision. Extension of one or more dates of performance in the order or decision does not extend subsequent dates of performance for related or unrelated items of Work unless the order or decision expressly so provides, or U.S. EPA, in consultation with the State, determines such an extension to be reasonably necessary and appropriate in light of such order or decision, or the U.S. EPA, the State and the RD/RA Settlors so agree.

XV. RETENTION AND AVAILABILITY OF INFORMATION

45. Except as provided in para. 48, the RD/RA Settlors shall make available to U.S. EPA, the State and the Tier 2 De Minimis Settlors and shall retain the following documents until 6 years following the third "five-year review" conducted for the Facility pursuant to Section 121(c) of CERCLA (or the final review, if there are fewer than three reviews): all records and documents in their possession, custody, or control which relate to the performance of this Consent Decree, including, but not limited to, documents reflecting the results of any sampling, tests, or other data or information generated or acquired by any of them, or on their behalf, with respect to the Facility. Except as provided in para. 48, the RD/RA Settlors and the Tier 2 De Minimis Settlors shall make available to U.S. EPA, the State and one another and shall retain until 6 years following the third "five-year review" conducted for the Facility pursuant to Section 121(c) of CERCLA (or the final review, if there are fewer than three reviews) all documents reasonably related to their own or any other person's liability for response action or costs at the Facility under CERCLA. After this period of document retention, the RD/RA Settlors and the Tier 2 De Minimis Settlors shall notify U.S. DOJ, U.S. EPA and the State at least ninety (90) calendar days prior to the destruction of any such documents, and upon request by U.S. EPA or the State, the RD/RA Settlors shall relinquish custody of the documents to U.S. EPA or the State.

46. The RD/RA Settlors may assert business confidentiality

claims covering part or all of the information provided in connection with this Consent Decree in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. §9604(e)(7), and pursuant to 40 CFR 2.203(b) and applicable State law. Information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 CFR Part 2, Subpart B and, if determined to be entitled to confidential treatment under State law by the State, afforded protection under State law by the State. Information determined by U.S. EPA not to be entitled to confidential treatment shall not be made available to the public unless and until U.S. EPA has complied fully with the requirements and procedures set forth in 40 CFR 2.204 and 2.205 and 42 U.S.C. §9604(e)(7). If no such claim accompanies the information when it is submitted to U.S. EPA and the State, the public may be given access to such information without further notice to the RD/RA Settlors.

47. Information acquired or generated by the RD/RA Settlors in performance of the Work that is subject to the provisions of Section 104(e)(7)(F) of CERCLA, 42 U.S.C. §9604(e)(7)(F), shall not be claimed as confidential by the RD/RA Settlors.

48. In the event that the RD/RA Settlors' obligation to produce documents under this Section includes documents which are privileged from disclosure as attorney-client communications, attorney work-product or other privilege recognized by law, the RD/RA Settlors may seek to withhold production of such documents to avoid improper disclosure. At the time production is requested, the RD/RA Settlors must provide the United States and the State all

information necessary to determine whether the document is privileged, including such information as is generally required under the Federal Rules of Civil Procedure. If the United States or the State does not agree with the RD/RA Settlors' claim of privilege, the RD/RA Settlors may seek protection of the documents from the Court. The RD/RA Settlors shall not withhold as privileged any information or documents that are required by this Consent Decree to be created, generated or collected, regardless of whether the document has been generated in the form of an attorney-client communication or other generally privileged manner. The RD/RA Settlors may not withhold as privileged any documents that are subject to the public disclosure provision of Section 104(e)(7)(F) of CERCLA, 42 U.S.C. §9604(e)(7)(F).

XVI. DE MINIMIS PAYMENT

49. Tier 1 De Minimis Settlors and those Federal Agencies electing to participate as a Tier 1 De Minimis Settlor shall pay to the Tier 1 Wayne Reclamation and Recycling, Inc. Lump Sum De Minimis Trust Fund or the Tier 1 Wayne Reclamation and Recycling, Inc, Installment De Minimis Trust Fund the amount specified in Appendix 7. The payment made by each Tier 1 De Minimis Settlor and those Federal Agencies electing to participate as a Tier 1 De Minimis Settlor represents its volumetric share: of the estimated RD/RA costs ($8,576,100) and estimated oversight costs ($1,286,415), of past costs incurred by U.S. EPA and IDEM ($587,924), and of the compromised Natural Resource Damage Claim ($76,000). Each payment also includes a premium of 200% of such

party's volumetric share of the estimated RD/RA and oversight costs, which is designed to pay for any and all response costs to be incurred at the Facility, including but not limited to cost overruns incurred during implementation of the remedy and for supplemental remedies or additional work to be performed in the event that U.S. EPA, in consultation with the State, determines the implemented remedy is not protective of public health or the environment. Additionally, those Federal Agencies and Tier 1 De Minimis Settlors owing Private Party Response Costs shall pay the amounts specified on Appendix 7 to the selected Tier 1 Wayne Reclamation and Recycling, Inc. De Minimis Trust Fund in settlement of those Private Party Response Costs. Payment of any of these costs does not constitute payment of a penalty, fine or monetary sanction.

50. Tier 2 De Minimis Settlors and those Federal Agencies electing to participate as a Tier 2 De Minimis Settlor shall pay to the Tier 2 Wayne Reclamation and Recycling, Inc. De Minimis Trust Fund, or as otherwise provided in para. 52.b, the amount specified in Appendix 8. The payment made by each Tier 2 De Minimis Settlor and those Federal Agencies electing to participate as a Tier 2 De Minimis Settlor represents its volumetric share: of the estimated RD/RA costs ($8,576,100) and oversight costs ($1,286,415), of past costs incurred by U.S. EPA and IDEM ($587,924), and of the compromised Natural Resource Damage Claim ($76,000). Provided that the payment made by the United States on behalf of the United States Air Force shall include the United States Air Force's share

of all such costs except past costs incurred by U.S. EPA and the compromised Natural Resource Damage Claim, which shall be paid as set forth in para. 52.b. Each payment also includes a premium of 100% of such party's volumetric share of the estimated RD/RA and oversight costs, which is designed to pay for any and all response costs not to exceed $15 million to be incurred at the Facility, including but not limited to cost overruns incurred during implementation of the remedy and for supplemental remedies or additional work to be performed in the event that U.S. EPA, in consultation with the State, determines the implemented remedy is not protective of public health or the environment, until future response costs expended by all parties to this Decree at the Facility exceed $15 million. Additionally, those Federal Agencies and Tier 2 De Minimis Settlors owing Private Party Response Costs shall pay the amounts specified in Appendix 8 to the Tier 2 Wayne Reclamation and Recycling, Inc. De Minimis Trust Fund in settlement of those Private Party Response Costs. Payment of any of these costs does not constitute payment of a penalty, fine or monetary sanction.

51.a. Each Tier 1 De Minimis Settlor, except the U.S. Postal Service, must select one of the following payment schedule options, and make their payments to the appropriate Tier 1 Wayne Reclamation and Recycling, Inc. De Minimis Trust Fund accordingly:

(i) Lump sum payment. De Minimis Settlors electing to make the above referenced payment in one lump sum shall make that payment within sixty (60) days of the lodging

date of this Decree.

(ii) Installment payments. De Minimis Settlors electing to make the above referenced payment in two installments shall pay one half of the amount owed within thirty (30) days of April 8, 1991, and pay the remaining half within eighteen (18) months date of April 8, 1991.

b. Each Tier 2 De Minimis Settlor must make a single payment to the Tier 2 Wayne Reclamation and Recycling, Inc. De Minimis Trust Fund within sixty (60) days of the lodging date of this Decree.

c. The Federal Agencies shall pay the above referenced payment within forty-five (45) days of entry of this Decree. With regard to the United States Postal Service's payment, $267.06 reflects payment of past costs to U.S. EPA and $34.52 reflects payment for the natural resource damage claim. With regard to the United States Air Force's payment, $11,801 reflects payment of past costs to U.S. EPA and $1525.58 reflects payment for the natural resource damage claim.

52.a Each De Minimis Settlor's payment shall be made by certified or cashier's check payable to either the Tier 1 Wayne Reclamation and Recycling, Inc. Lump Sum De Minimis Trust Fund, the Tier 1 Wayne Reclamation and Recycling, Inc. Installment De Minimis Trust Fund or the Tier 2 Wayne Reclamation and Recycling, Inc. De Minimis Trust Fund, as appropriate. Each check shall state the name and address of the De Minimis Settlor. Such payment shall be remitted to:

David H. Bluhm
First Trust National Association
180 East Fifth Avenue
Saint Paul, Minnesota 55101

b. The Federal Agencies payment shall be made by United States Treasury Check payable to either the Tier 1 Wayne Reclamation and Recycling, Inc. Lump Sum De Minimis Trust Fund or the Tier 2 Wayne Reclamation and Recycling, Inc. De Minimis Trust Fund, as appropriate. With regard to the obligations of the United States Air Force, the United States shall cause $11,801 to be directly transferred to the Hazardous Substances Superfund, which reflects the Air Force's share of past costs incurred by U.S. EPA, and the United States shall cause $1525.58 to be directly transferred to the Office of the Secretary of the Interior, which reflects the Air Force's share of the Natural Resource Damage Claim. The payments due from the Settling Defendants to the United States under Section XIX of this Decree have been reduced accordingly.

53. Each De Minimis Settlor and Federal Agency shall simultaneously send a copy of its check(s) to:

Tinka G. Hyde
Remedial Project Manager
Waste Management Division
U.S. Environmental Protection Agency
Region V (5HS-11)
230 South Dearborn Street
Chicago, Illinois 60604

Mathew S. Scherschel
Deputy Attorney General
Office of Attorney General
219 State House
Indianapolis, Indiana 46204

XVII. CIVIL PENALTIES

54. In addition to any other remedies or sanctions available to the United States, any Defendant which fails or refuses to comply with any terms or conditions of this Consent Decree may be subject to a civil penalty of up to $25,000 per day of such failure or refusal, pursuant to Section 122(l) of CERCLA, 42 U.S.C. §9622(l).

XVIII. ANTI-DEFICIENCY ACT

55. Nothing in this Decree shall be construed or deemed to obligate funds not available in an appropriation or fund, or to imply that any funds obligated during one fiscal year will be available in a future fiscal year, or otherwise be construed to create an obligation of funds by the Federal Agencies in violation of the Anti-Deficiency Act, 31 U.S.C. §1331.

XIX. REIMBURSEMENT AND PAYMENT OF NATURAL RESOURCE DAMAGE CLAIM BY THE RD/RA SETTLORS

56. a. Within 45 days of the entry of this Consent Decree, the RD/RA Settlors shall pay $597,077 to the EPA Hazardous Substances Superfund, delivered to the U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673 in the form of a certified or cashier check payable to "EPA Hazardous Substances Superfund," and referencing CERCLA Number IND 95 and DOJ Case Number 90-11-3-603. Interest at the statutory rate shall accrue on this total amount from April 22, 1991, until the date the check is received by U.S. EPA. A copy of such check shall be sent to the Director, Waste Management Division, U.S. EPA, Region V and to the Assistant Attorney General, Environment and Natural Resources

Division, U.S. Department of Justice, at the addresses provided in Section XXVIII (Notices). This payment is for reimbursement of past response costs claimed by the United States in this action through April 1, 1991.

b. The RD/RA Settlors shall pay within forty-five (45) days of the entry of this Consent Decree twenty-two thousand, four hundred forty five dollars and sixty eight cents ($22,445.68) to the State for its past response costs through April 1, 1991. Payment shall be made by means of a check made payable to "Hazardous Substances Response Trust Fund" and delivered to the Attorney General of the State.

c. The RD/RA Settlors shall pay within forty-five (45) days of entry of this Consent Decree $73,474.42 to the Office of the Secretary of the Interior for damage to natural resources at the Facility. Payment shall be made by means of a check made payable to the U.S. Fish and Wildlife Service, sent to the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota, 55111. Each payment should reference the Consent Decree to which it pertains.

57. The RD/RA Settlors shall pay all response costs not inconsistent with CERCLA or the NCP incurred by the United States and the State after the date set forth in paragraphs 56(a) and (b) with respect to implementing this Consent Decree (hereinafter referred to collectively as "Future Response Costs"), including all Oversight Costs, all costs of access required to be paid pursuant to Section X hereof, and all costs incurred in enforcing this

decree against the RD/RA Settlors which are not inconsistent with CERCLA or the NCP. Payment of response costs under Section XIX by the RD/RA Settlors does not constitute payment of a penalty, fine, or monetary sanction.

58. The United States and the State shall submit their claims for Future Response Costs incurred up to the date of entry of the Decree as soon as practicable after entry of the Decree. Claims for Future Costs shall be submitted periodically by U.S. EPA and the State, as practicable, and shall include cost documentation in the form of an itemized cost summary, formerly referred to as an Annotated SPUR Report, or Cost Summary. Payments shall be made, as specified in para. 56 above, within 30 days of the submission of the above claims. The RD/RA Settlors may inspect the United States' and the State's cost documentation upon request. If the RD/RA Settlors request to inspect the United States' or the State's cost documentation, in the form of an itemized cost summary, formerly referred to as an Annotated SPUR, or Cost Summary, payment then shall be made within 30 days of the submission of such documentation by the United States or the State to the RD/RA Settlors unless the RD/RA Settlors implement the dispute resolution procedures of Section XIV.

59. The RD/RA Settlors may agree among themselves as to the apportionment of responsibility for the payments required by this Section, but their liability to the United States and the State for these payments shall be joint and several.

XX. STIPULATED PENALTIES

60. The RD/RA Settlors shall pay stipulated penalties in the amounts set forth below, to be divided equally between the United States and the State, for each failure to complete any of the following requirements of this Consent Decree in an acceptable manner and within the time schedules specified in the SOW, the RD Work Plan or in other plans submitted and approved under this Consent Decree:

	PENALTY PER DAY		
	EACH DAY UP TO 30 DAYS	EACH DAY FROM 31 TO 60 DAYS	EACH DAY OVER 61 DAYS
Failure to submit progress reports [SOW Section III Task (4)(a)]	$500	$1,000	$2,000
Failure to file deed restriction	$1,000	$2,000	$5,000
Failure to submit Work Plan [SOW Section III Task 1]	$3,000	$4,000	$5,000
Failure to complete following components of remedial action			
Soil Remediation: VOC-contaminated soil [SOW Section II(A)(1)] (not to include attainment of Cleanup and Performance standards)	$3,000	$4,000	$5,000
Metal-contaminated soil [SOW Section (II)(A)(2)] (not to include attainment of Cleanup and Performance standards, if soil washing is done)	$3,000	$4,000	$5,000
PAH-contaminated soil [SOW Section (II)(A)(3)] (not to include attainment	$3,000	$4,000	$5,000

of Cleanup and Performance standards)			
RCRA Subtitle D Cap: Municipal Landfill [SOW Section (II)(B)]	$3,000	$4,000	$5,000
Groundwater Extraction and Treatment [SOW Section (II)(C)] (not to include attainment of Cleanup and Performance standards)	$3,000	$4,000	$5,000
Above- and Below-- ground Tanks Cleaning and Removal [SOW Section (II)(D)]	$3,000	$4,000	$5,000
Monitoring Systems [SOW Section (II)(E)]	$3,000	$4,000	$5,000
Failure to comply with notice or other requirements of this Consent Decree, including para. 16(a), 25, 26, 29, 33, 45, 81:	$300	$900	$1,250
Failure to take action to abate an endangerment under Section XXX:	$5,000	$7,500	$10,000

61. All penalties for violations of deadlines begin to accrue on the day after complete performance is due and all penalties for other violations begin to accrue on the day the RD/RA Settlors receive written notification of a violation of the terms or provisions of this Consent Decree, and continue to accrue through the final day of correction of the noncompliance or completion of performance. Any modifications of the time for performance shall be in writing and approved by U.S. EPA, in consultation with the State. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

62. Following U.S. EPA's determination, in consultation with the State, that the RD/RA Settlors have failed to comply with the requirements of this Consent Decree, U.S. EPA shall give the RD/RA Settlors written notification of the same and describe the non-compliance. This notice shall also indicate the amount of penalties due. However, penalties shall accrue as provided in the preceding paragraph regardless of whether U.S. EPA has notified the RD/RA Settlors of a violation, unless the violation is one which requires written notification pursuant to para. 61.

63. All penalties owed to the United States and the State under this Section shall be payable within 30 days of receipt of the notification of non-compliance, unless the RD/RA Settlors invoke the dispute resolution procedures under Section XIV.

64. The RD/RA Settlors may dispute the United States' and the State's right to the stated amount of penalties on the grounds that no violation occurred or the violation is excused by the Force Majeure provisions of Section XIII or that it is based on a mistake of law or fact. The dispute resolution procedures under Section XIV shall be followed for such a dispute.

65. Neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way the RD/RA Settlors' obligation to continue and complete the performance required hereunder.

66. Penalties shall continue to accrue as provided in para. 61 during the dispute resolution period, but need not be paid until the following decision points:

a. If the dispute is resolved by agreement or by decision or order of U.S. EPA which is not appealed to this Court, accrued penalties shall be paid to U.S. EPA and the State within fifteen (15) days of the agreement or the receipt of U.S. EPA decision or order;

b. If the dispute is appealed to this Court, accrued penalties shall be paid to U.S. EPA and the State within fifteen (15) days of receipt of the Court's decision or order, except as provided in subparagraph c below;

c. If the District Court's decision is appealed by the RD/RA Settlors, the RD/RA Settlors shall pay all penalties established by the District Court into an interest-bearing escrow account within fifteen (15) days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the appellate court decision, the escrow agent shall pay the balance of the account to U.S. EPA, the State and/or to the RD/RA Settlors to the extent that they prevail, as determined pursuant to the following paragraph.

67. The RD/RA Settlors shall not owe stipulated penalties for any items upon which they prevail in dispute resolution or for any items for which U.S. EPA or the State agree not to seek such stipulated penalties. If a dispute is appealed, the party appealing the dispute shall request a specific determination at each stage of dispute resolution as to the issues and items upon which they have prevailed and as to the amount of any stipulated

penalties owed.

68. Notwithstanding the above provisions, the RD/RA Settlors shall have the right to petition the Court or U.S. EPA (according to the level of dispute resolution reached) for forgiveness of stipulated penalties that accrue during dispute resolution for items upon which they did not prevail, based on a finding (1) that the delay in work or other violation that caused the stipulated penalty to accrue was necessary and appropriate during the dispute resolution proceeding, (2) that the RD/RA Settlors' position regarding the dispute had substantial support in law and fact and reasonably could have been expected to prevail, considering the applicable standard of review, and (3) that the RD/RA Settlors sought dispute resolution at the earliest practicable time and took all other appropriate steps to avoid any delay in remedial action work as a result of the dispute. If the Court or U.S. EPA so finds, they may grant an appropriate reduction in the stipulated penalties that accrued during the dispute resolution period. The RD/RA Settlors shall have the burdens of proof and persuasion on any petition submitted under this provision.

69. Interest shall begin to accrue on the unpaid balance of stipulated penalties on the day following the date payment is due. Pursuant to 31 U.S.C. §3717, interest shall accrue on any amounts overdue at a rate established by the Department of Treasury for any period after the date of billing. A handling charge will be assessed at the end of each 30 day late period, and a six percent per annum penalty charge will be assessed if the penalty is not

paid within 90 days of the due date. Penalties shall be paid according to the procedures specified in para. 56. hereof.

70. If the RD/RA Settlors fail to pay stipulated penalties, the United States or the State may institute proceedings to collect the penalties from the RD/RA Settlors. In any such proceeding, penalties shall be paid according to the procedures specified.

71. Notwithstanding any of the above provisions, U.S. EPA may elect to assess civil penalties and/or to bring an action in U.S. District Court pursuant to Section 109 of CERCLA to enforce the provisions of this Consent Decree. Payment of stipulated penalties shall not preclude U.S. EPA or the State from electing to pursue any other remedy or sanction to enforce this Consent Decree, and nothing shall preclude U.S. EPA or the State from seeking statutory penalties against the RD/RA Settlors for violations of statutory or regulatory requirements.

XXI. COVENANTS NOT TO SUE DE MINIMIS SETTLORS

72. Subject to the Reservation of Rights in Section XXII, and the certification requirements of Section XXIII of this Decree, the United States, the State, the RD/RA Settlors, the Tier 1 De Minimis Settlors and the Tier 2 De Minimis Settlors covenant not to sue or take any other civil or administrative action against any Tier 1 De Minimis Settlor, or their officers, directors, employees, successors and assigns, for Tier 1 Covered Matters. Tier 1 Covered Matters shall include any and all civil liability to the United States, the State, the RD/RA Settlors, other Tier 1 De Minimis Settlors and the Tier 2 De Minimis Settlors for causes of action

arising under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§9606, 9607(a), Section 7003 of RCRA, 42 U.S.C. §9673, and Indiana Code 13-7-8.7 and common law nuisance, and relating to the Facility. Tier 1 Covered Matters shall also include any and all civil liability for Private Party Response Costs, as well as any and all civil liability for future response costs relating to the Facility. These covenants not to sue for present and potential future liability shall take effect as to each Tier 1 De Minimis Settlor after that De Minimis Settlor has made timely and full payment pursuant to Section XVI of this Decree.

73. Subject to the Reservation of Rights in Section XXII, and the certification requirements of Section XXIII of this Decree, the United States the State, the RD/RA Settlors, Tier 2 De Minimis Settlors and the Tier 1 De Minimis Settlors covenant not to sue or take any other civil or administrative action against any Tier 2 De Minimis Settlor, or their officers, directors, employees, successors or assigns, for Tier 2 Covered Matters. Tier 2 Covered Matters shall include civil liability to the United States, the State, the RD/RA Settlors, other Tier 2 De Minimis Settlors and the Tier 1 De Minimis Settlors for causes of action arising under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§9606, 9607(a), and Section 7003 of RCRA, 42 U.S.C. §4673, and Indiana Code 13-7-8.7 and common law nuisance, for future response costs not in excess of $15 million and relating to the Facility. Tier 2 Covered Matters shall also include any and all civil liability for Private Party Response Costs, as well as any and all civil liability for future

response costs relating to the Facility which do not exceed $15 million. Tier 2 Covered Matters does not extend to future costs, both response and oversight, incurred at the Facility by all parties to this Consent Decree in excess of $15 million. These covenants not to sue for present liability and potential future liability not in excess of $15 million shall take effect as to each Tier 2 De Minimis Settlor after that De Minimis Settlor has made timely and full payment pursuant to Section XVI of this Consent Decree.

XXII. RESERVATION OF RIGHTS AS TO DE MINIMIS SETTLORS

74. Nothing in this Consent Decree is intended nor shall it be construed as a release or a covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States, the State, or any RD/RA Settlor may have against any of the De Minimis Settlors for:

a. any liability as a result of a failure to make the payments required by Section XVI of this Decree;

b. any matters not expressly included in Covered Matters;

c. criminal liability.

75. Nothing in this Consent Decree is intended to be nor shall it be construed as a release or a covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States, the State, or any RD/RA Settlor may have against Tier 2 De Minimis Settlors electing to participate as a Tier 2 De Minimis

Settlor for costs, both response and oversight, incurred by all parties to this Decree at the Facility in excess of $15 million.

76. If information not currently known to the United States is discovered which indicates that any De Minimis Settlor contributed hazardous substances to the Facility in such greater amount or of such greater toxic or other hazardous effect that the De Minimis Settlor no longer qualifies as a De Minimis party at the Facility because such party contributed greater than 1% of the hazardous substances disposed of at the Facility or contributed disproportionately to the cumulative toxic or other hazardous effect of the hazardous substances at the Facility then the covenants not to sue set forth in Section XXI and the contribution protection referred to in Section XXV are null and void as to that De Minimis Settlor.

XXIII. CERTIFICATION BY DE MINIMIS SETTLORS

77. By signing this Consent Decree, each De Minimis Settlor certifies to the best of its knowledge and belief, the following:

a. The De Minimis Settlor has made reasonable inquiry to gather all information which relates in any way to its ownership, operation, generation, treatment, transportation, storage or disposal of hazardous substances at or in connection with the Facility, and has provided to the United States all such information, and

b. The information referred to in Section XXIII, para. 77.a above is materially true and correct with respect to the amount of hazardous substances or other wastes that the De Minimis

Settlor may have shipped or arranged to be shipped to the Facility.

XXIV. COVENANTS NOT TO SUE RD/RA SETTLORS

78. Except as otherwise specifically provided in the following paragraph or elsewhere in this Decree, the United States, the State, and the De Minimis Settlors covenant not to sue or take any administrative action against the RD/RA Settlors or their officers, directors, employees, successors or assigns for RD/RA Settlor Covered Matters. RD/RA Settlor Covered Matters shall mean any and all claims available to the United States under Sections 106 and 107 of CERCLA and Section 7003 of RCRA relating to the Facility, any and all claims available to the State under CERCLA, RCRA, Indiana Code 13-7-8.7, and common law nuisance. RD/RA Settlor Covered Matters shall also include any and all civil liability for response costs relating to the Facility, paid by any De Minimis Settlor or by any Federal Agency, any and all civil liability for Private Party Response Costs, as well as any and all civil liability for future response costs relating to the Facility paid by any RD/RA Settlor. With respect to Future Liability, the covenants not to sue by the United States and the State shall take effect upon certification by U.S. EPA of the completion of the remedial action concerning the Facility pursuant to Section XXXIII below. The covenants not to sue by the De Minimis Settlors shall take effect upon entry of this Consent Decree.

"Covered Matters" does not include:

a. Liability arising from hazardous substances removed from the Facility;

b. Criminal Liability;

c. Claims based on a failure by the RD/RA Settlors to meet the requirements of this Consent Decree;

d. Any matters for which the United States or the State is owed indemnification under Section XXVI hereof; and

e. Liability for violations of Federal and State law which occur during implementation of the remedial action.

79. Notwithstanding any other provision in this Consent Decree, the United States reserves the right to (1) institute proceedings in this action or in a new action or to issue an Order seeking to compel the RD/RA Settlors to perform any additional response work at the Facility, and (2) the United States and the State reserve the right to institute proceedings against the RD/RA Settlors in this action or in new action seeking to reimburse the United States for its response costs and to reimburse the State for its matching share of any response action undertaken by U.S. EPA and/or the State under CERCLA, relating to the Facility, if:

a. for proceedings prior to U.S. EPA certification of completion of the remedial action concerning the Facility,

(i) conditions at the Facility, 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 indicates that the remedial action is not protective of human health and the environment; and

b. for proceedings subsequent to U.S. EPA certification

of completion of the remedial action concerning the Facility,

(i) conditions at the Facility, previously unknown to the United States, are discovered after the certification of completion by U.S. EPA, or

(ii) information is received, in whole or in part, after the certification of completion by U.S. EPA,

and these previously unknown conditions or this information indicates that the remedial action is not protective of human health and the environment.

80. Notwithstanding any other provisions in this Consent Decree, the covenants not to sue in this Section shall not relieve the RD/RA Settlors of their obligation to meet and maintain compliance with the requirements set forth in this Consent Decree, including the conditions in the ROD, which are incorporated herein, and the United States and the State reserve their rights to take response actions at the Facility in the event of a breach of the terms of this Consent Decree and to seek recovery of costs incurred after entry of the Consent Decree: 1) resulting from such a breach; 2) relating to any portion of the Work funded or performed by the United States or the State; or 3) incurred by the United States or the State as a result of having to seek judicial assistance to remedy conditions at or adjacent to the Facility.

81. The De Minimis Settlors and the RD/RA Settlors hereby release and waive any rights to assert any claims against the United States or the State or any agency of the State relating to the Facility; provided, however, that the RD/RA Settlors' release and waiver of any rights to assert claims against the U.S. Postal Service is contingent upon that Federal Agency's compliance with

the terms of this Decree; and further provided, however, that the RD/RA Settlors' release and waiver of any rights to assert claims against the U.S. Air Force is contingent upon that Federal Agency's compliance with the terms of this Decree. Within thirty (30) days of entry of this Decree, the RD/RA Settlors shall withdraw the Petition for Reimbursement pursuant CERCLA Section 106(b)(2) now pending before U.S. EPA, relating to Unilateral Administrative Order VW-88-C-001.

XXV. CONTRIBUTION PROTECTION

82. Nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue by any Party regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity not a signatory to this Consent Decree for any liability it may have arising out of or relating to the Facility. The Parties expressly reserve the right to sue or continue to sue any person, other than each other, in connection with the Facility.

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

84. Subject to the Reservation of Rights in Section XXII, each De Minimis Settlor and Federal Agency will, by entering into and carrying out the terms of this Decree, have resolved its

liability to the United States, the State and the RD/RA Settlors for either Tier 1 Covered Matters or Tier 2 Covered Matters, as applicable, as defined in Section XXI, as well as for Private Party Response Costs, and, pursuant to Section 113 (f) of CERCLA, 42 U.S.C. §9613(f), and Section 122(g)(5) of CERCLA, 42 U.S.C. §9622(g)(5), shall not be liable for claims for contribution for either Tier 1 Covered Matters or Tier 2 Covered Matters, as applicable.

XXVI. INDEMNIFICATION; OTHER CLAIMS

85. The RD/RA Settlors agree to indemnify, save and hold harmless the United States, the State and/or their representatives from any and all claims or causes of action arising from the acts or omissions of the RD/RA Settlors and/or their representatives, including contractors and subcontractors, in carrying out the activities pursuant to this Consent Decree. The United States and the State shall notify the RD/RA Settlors of any such claims or actions promptly after receipt of notice that such a claim or action is anticipated or has been filed.

86. The United States, the State and the Tier 1 De Minimis Settlors do not assume any liability of the RD/RA Settlors by virtue of entering into this agreement or by virtue of any designation that may be made of the RD/RA Settlors as U.S. EPA's representatives under Section 104(e) of CERCLA for purposes of carrying out this Consent Decree. The Tier 2 De Minimis Settlors, unless and until cost incurred at the Facility exceed $15 million, do not assume any liability of the RD/RA Settlors by virtue of

entering into this agreement or by virtue of any designation that may be made of the RD/RA Settlors as U.S. EPA's representatives under Section 104(è) of CERCLA for purposes of carrying out this Consent Decree. The United States, the State and the Tier 1 De Minimis Settlors are not to be construed as parties to any contract entered into by the RD/RA Settlors in carrying out the activities pursuant to this Consent Decree. The Tier 2 De Minimis Settlors, unless and until costs incurred at the Facility exceed $15 million, are not to be construed as parties to any contract entered into by the RD/RA Settlors in carrying out the activities pursuant to this Consent Decree. The proper completion of the Work under this Consent Decree is solely the responsibility of the RD/RA Settlors.

87. The RD/RA Settlors waive their rights to assert any claims against the Hazardous Substances Superfund under CERCLA or the Indiana Hazardous Substances Response Trust Fund that are related to any costs incurred in the Work performed pursuant to this Consent Decree, and nothing in this Consent Decree shall be construed as U.S. EPA's preauthorization of a claim against the Superfund or the State's preauthorization of a claim against Indiana's Trust Fund.

XXVII. INSURANCE/FINANCIAL RESPONSIBILITY

88. The RD/RA Settlors, or their contractors, shall purchase and maintain in force for the duration of the remedial action work, comprehensive general liability and automobile insurance with limits of one million dollars, combined single limit, naming as insureds the RD/RA Settlors, the United States and the State. In

addition, for the duration of this Consent Decree, the RD/RA Settlors shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing work on behalf of the RD/RA Settlors in furtherance of this Consent Decree. Prior to commencement of the Work at the Facility, the RD/RA Settlors shall provide U.S. EPA and the State with a certificate of insurance and a copy of the insurance policy. If the RD/RA Settlors demonstrate by evidence reasonably satisfactory to the United States and the State that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor the RD/RA Settlors need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor. If the RD/RA Settlors are unable to obtain such insurance they may petition that such an event is a Force Majeure pursuant to Section XIII.

89. Within 60 days of entry of this Consent Decree, the RD/RA Settlors shall provide financial security, in the amount of ten million dollars ($ 10,000,000), or in such lesser amount as U.S. EPA, in consultation with the State, may authorize in its discretion after completion of the major components of the remedial action, consistent with 40 C.F.R. 264.145, to assure completion of the Work at the Facility.

90. Within sixty (60) days of entry of this Consent Decree,

Columbia City shall provide financial assurance of $1.2 million or in such lesser amount as U.S. EPA may authorize in its discretion, consistent with 40 CFR 264.145, to assure completion of Columbia City Work. Such financial assurance may be provided by one or more different mechanisms including, but not limited to: the dedication by Columbia City Council resolution of City bonding authority to the subject Columbia City components of the Work; or the placement or dedication by City Council resolution of other City funds into an account specifically assigned for the Columbia City components of the Work. Within sixty (60) days of entry of this Consent Decree, Columbia City shall have U.S. EPA, the State, and the other RD/RA Settlors named as additional insureds on any insurance coverage relating to the Columbia City Work.

XXVIII. NOTICES

91. Whenever, under the terms of this Consent Decree, notice is required to be given, a report or other document is required to be forwarded by one party to another, or service of any papers or process is necessitated by the dispute resolution provisions of Section XIV hereof, such correspondence shall be directed to the following individuals at the addresses specified below:

As to the United States or U.S. EPA:

a. Regional Counsel
Attn: Wayne Reclamation and Recycling, Inc. Coordinator (5CS)
U.S. Environmental Protection Agency
230 S. Dearborn Street
Chicago, Illinois 60604

As to the State of Indiana:

a. Attorney General
State of Indiana
Rm 219, State House
Indianapolis, IN 42604
Attn: Wayne Reclamation and Recycling, Inc. Coordinator

b. Director, Waste Management Division
Attn: Wayne Reclamation and Recycling, Inc. Remedial Project Manager (5HS-11)
U.S. Environmental Protection Agency
230 S. Dearborn Street
Chicago, Illinois 60604

b. Commissioner, Indiana Department of Environmental Management
105 S. Meridian
Indianapolis, IN 42606
Attn: Wayne Reclamation and Recycling, Inc. Project Manager, Superfund Section
Office of Environmental Response

c. Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice
10th & Pennsylvania Ave., N.W.
Washington, D.C. 20530
Ref. D.J. # 90-11-3-603 and
Ref. D.J. # 90-11-3-663

As to the RD/RA Settlors:

William Hall
Breed, Abbott & Morgan
1818 N Street, N.W.
Washington, D.C. 20036

Christopher Dunsky
Honigman, Miller, Schwartz & Cohn
2290 First National Building
Detroit, MI 48226

As to the De Minimis Settlors

Neal Weinfield
Schiff Hardin & Waite
7200 Sears Tower
Chicago, Illinois 60606-6473

As to Columbia City

Stephen B. Cherry
Sommer & Barnard
4000 Bank One Tower
111 Monument Circle
P.O. Box 44363
Indianapolis, Indiana 46244-0363

Timothy J. Bloom
Bloom & Bloom
111 W. Market
P.O. Box 405
Columbia City, Indiana 46725

The Parties shall notify one another in writing of changes of the above addresses.

XXIX. CONSISTENCY WITH NATIONAL CONTINGENCY PLAN

92. The United States and the State agree that the Work and additional work if any, if properly performed, is necessary and

consistent with the provisions of the National Contingency Plan.

XXX. ENDANGERMENT AND EMERGENCY RESPONSE

93. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of a hazardous substance into the environment which presents or may present an imminent and substantial endangerment to public health or welfare or the environment, the RD/RA Settlors shall immediately take all appropriate action to prevent, abate, or minimize such release and endangerment, and shall immediately notify the RPM or, if the RPM is unavailable, the U.S. EPA Emergency Response Section, Region V, U.S. EPA, at (312) 353-2318, as well as the State pursuant to 327 Indiana Administrative Code 2-6-2. The RD/RA Settlors shall take such action in accordance with all applicable provisions of the Health and Safety/Contingency Plan developed pursuant to the SOW and approved by U.S. EPA. In the event that the RD/RA Settlors fail after a reasonable time period to take appropriate response action as required by this paragraph and U.S. EPA or the State takes such action instead, the RD/RA Settlors shall reimburse all costs of the response action not inconsistent with the NCP. Payment of such response costs shall be made in the manner provided in Section XIX hereof within 30 days of the RD/RA Settlors' receipt of a written demand for payment and an annotated SPUR or Cost Summary describing the costs incurred.

94. Nothing in the preceding paragraph or in this Consent Decree shall be deemed to limit the response authority of the United States under 42 U.S.C. §9604 or the State under applicable

law.

XXXI. COMMUNITY RELATIONS

95. The RD/RA Settlors shall cooperate with U.S. EPA and the State in providing information regarding the progress of remedial design and remedial action at the Facility to the public. As requested by U.S. EPA or the State, the RD/RA Settlors shall participate in the preparation of all appropriate information disseminated to the public and in public meetings which may be held or sponsored by U.S. EPA or the State to explain activities at or concerning the Facility.

XXXII. RETENTION OF JURISDICTION; MODIFICATION

96. Retention of Jurisdiction. This Court will retain jurisdiction for the purpose of enabling all of the Parties to apply to the Court at any time for such further order, direction, or 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 XIV hereof.

97. Modification. No material modification shall be made to this Consent Decree without written notification to and written approval of the Parties and the Court except as provided below or in Section VII (Modification of the Scope of Work; Additional Work). Other modifications shall require written notification and approval by all Parties. The notification required by this Section shall set forth the nature of and reasons for any requested modification. No oral modification of this Consent Decree shall be

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

XXXIII. EFFECTIVE DATE AND CERTIFICATION OF COMPLETION OF REMEDY, AND OTHER PROVISIONS

98. This Consent Decree shall be effective upon the date of its entry by the Court, except to the extent provided in para. 13 regarding the date of commencement of remedial design and as provided in Section XVI regarding the date of payment by De Minimis Settlors.

99. Certification of Completion of Remedial Action.

a. Interim Application. When the RD/RA Settlors believe that the cap, the soil vapor extraction and groundwater pump and treat systems are operating as designed, they shall submit to U.S. EPA and the State a Notification of Interim Completion of Remedial Action and an interim final report which summarizes the work done and any modification made to the SOW or RD Workplan thereunder. The report shall be prepared and certified as true and accurate by a registered professional engineer and the RD/RA Settlors' Project Coordinator, and shall include appropriate supporting documentation.

b. Interim Completion. Upon receipt of the Notice of Interim Completion of Remedial Action, U.S. EPA, in consultation with the State, shall review the interim final report and supporting documentation, and the remedial actions taken. Within a reasonable time period, U.S. EPA, in consultation with the State, shall issue a written Interim Certification of Completion of the Construction of the Remedial Action upon a determination that the

RD/RA Settlors have initiated operation of the cap, the soil vapor extraction and groundwater pump and treat systems as designed.

c. Final Application. When the RD/RA Settlors believe that construction of the cap, operation of the soil vapor extraction and pump and treat systems has been completed and that the demonstration of compliance with Cleanup and Performance Standards has been made in accordance with this Consent Decree, they shall submit to U.S. EPA and the State a Notification of Completion of Remedial Action and a final report which summarizes the work done, any modification made to the SOW or Work Plan thereunder relating to the Cleanup and Performance Standards, and data demonstrating that the Cleanup and Performance Standards have been achieved and maintained. The report shall be prepared and certified as true and accurate by a registered professional engineer and the RD/RA Settlors' Project Coordinator, and shall include appropriate supporting documentation.

d. Certification of Completion. Upon receipt of the Notice of Completion of Remedial Action, U.S. EPA, in consultation with the State, shall review the final report and supporting documentation, and the remedial actions taken. U.S. EPA, in consultation with the State, shall issue a Certification of Completion of Remedial Action upon a determination that the RD/RA Settlors have completed construction of the cap and operation of the soil vapor extraction and pump and treat systems in accordance with the terms of this Consent Decree and demonstrated compliance and maintenance with Cleanup and Performance Standards, and that no

further corrective action is required.

e. Post-Certification Obligations. Following Certification, the RD/RA Settlors shall continue to perform, at a minimum, the following Work: monitor the municipal landfill and perform operation and maintenance at the Facility as set forth in the Operation and Maintenance Plan required by the SOW. In the course of the Work, U.S. EPA, in consultation with the State, may identify additional elements of Post-Certification Work which the RD/RA Settlors are obligated to complete. The RD/RA Settlors shall also continue to provide access to those portions of the Facility to which they have a right of access pursuant to the Order for Entry of Default Judgment in Borg-Warner Corporation, et al. v. Wayne Reclamation and Recycling, Inc., et al. (Civil Action No. F88-58, N.D. Ind.) dated March 8, 1990, and use their best efforts to provide access to remaining portions of the Facility to U.S. EPA and the State; submit reports as required by the SOW; pay unpaid stipulated penalties; indemnify and hold harmless the United States and the State, as set forth in Section XXVI of this Decree; and, consistent with Section VIII of this Decree, take response actions for those portions of the Work subject to continuing operation and maintenance obligations which U.S. EPA, in consultation with the State, determines are necessary as a result of U.S. EPA's review of remedial action at the Facility.

100. Effect of Settlement. The entry of this Consent Decree shall not be construed to be an acknowledgment by the Parties that the release or threatened release concerned constitutes an imminent

and substantial endangerment to the public health or welfare or the environment. Except as provided in the Federal Rules of Evidence, the participation by any party in this decree shall not be considered an admission of fact or liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding (except a proceeding to enforce this decree), as provided in Section 122(d)(1)(B) of CERCLA.

101. U.S. EPA and U.S. Air Force. Notwithstanding any other provision of this Decree, U.S. EPA may, through appropriate administrative process, proceed against the United States Air Force pursuant to para. 79 of this Decree. This provision shall not affect, limit, or create any rights, liabilities, or obligations of or in any other person, whether a party to this Decree or not.

102. Wayne Reclamation and Recycling, Inc. De Minimis Trust Fund Agreements. Pursuant to this Decree the RD/RA Settlors and De Minimis Settlors are required and agree to establish the Wayne Reclamation and Recycling, Inc. De Minimis Trust Fund Agreements. The RD/RA Settlors must submit copies of the Wayne Reclamation and Recycling, Inc. De Minimis Trust Fund Agreements and copies of the executed signature pages of those trust agreements to the United States within thirty (30) days of the date that the signature pages of this Consent Decree must be returned to the United States.

ENTERED this 20 day of July, 1994.

U.S. District Judge

The parties whose signatures appear below hereby consent to the terms of this Consent Decree. The consent of the United States is subject to the public notice and comment requirements of Section 122(i) of CERCLA, 42 U.S.C. 9622 (i),) and 28 CFR §50.7.

UNITED STATES OF AMERICA

By: _____
Barry M. Hartman
Acting Assistant Attorney General
Environment & Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: _____

By: _____
Valdas V. Adamkus
Regional Administrator
U.S. EPA, Region V

Date: Aug. 13, 1991.